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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ELY MEDINA, et al.,

4 Plaintiffs,

5 v.

16 Civ. 869 (JCG)

6 EAST COMMUNICATION, INC.
7 d/b/a EAST COMMUNICATION, INC.,
JAMES PARK, and LUIS G. YO,

8 Defendants.

9 -----x

10 New York, N.Y.
November 13, 2017
11 10:00 a.m.

12 Before:

13 HON. JENNIFER CHOE-GROVES,

14 Judge (sitting by designation)

15 APPEARANCES

16 MICHAEL FAILLACE & ASSOCIATES, P.C.

Attorneys for Plaintiffs

17 BY: JOSHUA S. ANDROPHY

SARA J. ISAACSON

18 KAPLAN & CHUN, P.C.

Attorneys for Defendants

19 BY: HOWARD CHUN

HBDsMED1

(Case called)

MS. ISAACSON: Good morning, your Honor. Sara Isaacson from Michael Faillace & Associates for the plaintiff, Ely Medina.

MR. ANDROPHY: Joshua Androphy of Michael Faillace & Associates, P.C., also for the plaintiff, Ely Medina.

THE COURT: Good morning.

MR. CHUN: Good morning. For the defendant, Kaplan & Chun, Howard Chun. With me is one of the defendants, Mr. James Park.

THE COURT: Good morning. Thank you, everyone, for arriving on time and for coming at a different time that we let you know about at the last minute.

We are here today for a bench trial. Have there been any further discussions on settlement, or are we still moving forward with a trial today?

MS. ISAACSON: Your Honor, there were some discussions, but the parties are ready to move forward with trial.

THE COURT: Would the parties like to make brief opening statements?

MS. ISAACSON: Yes, your Honor.

THE COURT: OK. Plaintiff.

MS. ISAACSON: Your Honor, this is, from our perspective, a very basic Fair Labor Standards Act and New York

HBDsMED1

1 Labor Law case where the plaintiff is alleging that the
2 defendants failed to pay him minimum wage and overtime.

3 Since it was passed in 1988, the Fair Labor Standards
4 Act has stood for our country's commitment to paying workers
5 the minimum wage and for paying workers overtime for brutal
6 hours worked and to ensure that workers are protected who might
7 otherwise be exploited. The law does so by imposing strict
8 requirements on employers as to how much they have to pay the
9 workers and by requiring that they record exactly how they are
10 complying with the law.

11 Today you're going to hear from the plaintiff about
12 the long hours that he worked at East Communication. East
13 Communication is a mobile phone store that felt it didn't need
14 to comply with the law. The plaintiff is going to paint a
15 picture for you about how they just utterly failed to comply
16 with the Fair Labor Standards Act and New York Labor Law. Each
17 time that he was paid, he was never given a pay stub containing
18 New York Labor Law required information. Additionally, the
19 defendants never gave him a notice containing important aspects
20 about his pay, as required under the New York Labor Law.

21 You will also hear from the plaintiff about the long
22 hours that he worked and how he was never paid overtime. You
23 will also hear just, essentially, that they completely failed
24 to comply with the Fair Labor Standards Act and New York Labor
25 Law. Accordingly, you will find that the defendants are

HBDsMED1

1 liable.

2 THE COURT: Thank you.

3 Defense counsel, would you like to make an opening
4 statement?

5 MR. CHUN: Yes, your Honor.

6 We also share in the same sediment that this is
7 going to be an easy case. We have a plaintiff who we believe
8 actually requested payments to be made in cash on an
9 agreed-upon amount of \$9 an hour and the hours worked. The
10 method of payment that you will hear was paid in cash.

11 Mr. Medina, we believe, every week was supposed to
12 report and tell exactly the person how much he was supposed to
13 get paid. He got paid right on the spot. If he never got paid
14 more for overtime it's because he never worked overtime. He
15 worked ten hours. The shift is ten hours, from 10:00 a.m. to
16 8:00 p.m. That includes payment for lunch. So my clients,
17 they require him to be there for ten hours. What he is going
18 to do there for the ten hours, they hope he is working. He
19 gets paid for the entire ten hours that he is there. We
20 believe that it is, in fact, clear cut. He was paid for all
21 the time that he worked. Whatever he requested, he was paid.

22 Thank you.

23 THE COURT: Are there any stipulations as to exhibits?

24 MS. ISAACSON: No, your Honor.

25 MR. CHUN: No.

HBDsMED1

1 THE COURT: I received exhibits in advance from the
2 plaintiff. I did not receive any exhibits from the defendant.

3 Does the defendant plan to have any exhibits today?

4 MR. CHUN: No.

5 THE COURT: Who do we expect testimony from?

6 MS. ISAACSON: We will be calling the plaintiff, Ely
7 Medina, your Honor.

8 THE COURT: How about for the defendant?

9 MR. CHUN: Mr. James Park, and we have a witness that
10 is not here yet, but she can't be in the room anyway,
11 Ms. Flores.

12 THE COURT: Who is Ms. Flores?

13 MR. CHUN: She is an employee of East Communication,
14 Inc., and she was the one that actually gave Mr. Medina the
15 cash payments.

16 THE COURT: I'm sorry, I didn't hear you. The cash?

17 MR. CHUN: Payments.

18 THE COURT: Payments.

19 MR. CHUN: Yes. She was the one responsible to
20 actually give him the money.

21 THE COURT: I would like to clarify the time frame
22 that is at issue in this case. Could you please specifically
23 tell the court what dates are at issue?

24 MS. ISAACSON: Your Honor, it begins in February 2015
25 until the end of November 2015, beginning of December 2015.

HBDsMED1

Medina - direct

1 THE COURT: How long do the parties expect that the
2 trial will take, in your best estimate?

3 MS. ISAACSON: We believe a few hours, two or three
4 hours, your Honor.

5 THE COURT: Defense counsel, what do you think you
6 will need?

7 MR. CHUN: If we go until five o'clock, if that is
8 what time the courts close, I believe we can finish by then.

9 THE COURT: OK. No longer than one day. You think we
10 can finish today, both of you?

11 MR. CHUN: It depends on what they say, too, because I
12 might have a rebuttal witness that is not one of the two people
13 that I mentioned.

14 THE COURT: OK. Plaintiff, would you like to call
15 your first witness?

16 MS. ISAACSON: Yes, your Honor. The plaintiff would
17 like to call the plaintiff himself, Ely Medina.

18 ELY MEDINA,

19 called as a witness by the Plaintiffs,

20 having been duly sworn, testified as follows:

21 THE COURT: Good morning, Mr. Medina. Welcome.

22 THE WITNESS: Good morning.

23 DIRECT EXAMINATION

24 BY MS. ISAACSON:

25 Q. Good morning, Mr. Medina. Did you ever work at a place

HBDsMED1

Medina - direct

1 called East Communication, Inc.?

2 A. Yes, I did.

3 Q. What kind of business is East Communication, Inc.?

4 A. They sell cell phones, and he @measures under the Metro PCS
5 brand.

6 Q. What kind of items does East Communications offer for sale?

7 A. They have a variety of different plans provided by Metro
8 PCS, as well as phones and accessories.

9 Q. Where is it located?

10 A. It is located in the Bronx, New York. 1452 East Avenue in
11 Bronx, New York.

12 Q. When did you begin work at East Communication?

13 A. Approximately February, either the 20th or the 21st, 2015.

14 Q. When did you stop working at East Communication, Inc.?

15 A. Approximately the end of November, maybe beginning of
16 December 2015.

17 Q. Between February 2015 and the end of November 2015 or
18 beginning of December 2015, did you take any vacations while
19 you were working at East Communications?

20 A. No.

21 Q. What did you do at East Communication, Inc.?

22 A. Well, by title, I was just a sales associate, but you could
23 say my responsibilities were that almost of management, as I
24 had to open the store in a timely fashion, get the store ready
25 for business, and then just perform daily transactions, such as

HBDsMED1

Medina - direct

1 bill payments, purchases, phone upgrades, accessory sales, all
2 those things of that matter.

3 Q. Did you do anything else for East Communication, Inc.?

4 A. From time to time, I was requested by Mr. Park to do -- I'm
5 sorry -- deposits in both Chase and TD Bank when they were
6 unable to make them.

7 Q. Who was in charge of East Communication?

8 A. To my knowledge, Mr. James Park and Luis Yo.

9 Q. Who set your schedules while you worked at East
10 Communication?

11 A. For the most part, Mr. James Park, but from time to time
12 Mr. Park was not available. I would have communication with
13 Mr. Luis.

14 Q. Who paid you while you worked at East Communication?

15 A. Mr. James Park paid me. When we sat down, we would
16 calculate hours worked, and we would go off of that. And he
17 would pay me in cash from the register, I might add.

18 Q. What was your schedule when you started working at
19 East Communication?

20 A. My schedule was full-time hours, but many times I worked
21 over the 40 typical hours worked.

22 Q. What were the typical hours worked?

23 A. Well, the store business hours are from ten to eight p.m.
24 from Monday to Saturday, and Sundays, I believe it is 12 to
25 five or 12 to six. And you could say I usually had one day

HBDsMED1

Medina - direct

1 off. So I was working about six days a week, pretty much in
2 the store by myself from opening to close.

3 Q. Did you ever arrive before open and close time of the
4 store?

5 A. Well, of course, because in order for the store to be open
6 on time at ten a.m., you have to arrive, you know, around 9:30,
7 9:15, because it was my responsibility to unlock the gate,
8 raise the gate, which by the way is a manual gate, and then
9 open the store, put in the alarm code, turn the computer on,
10 you know, typical stuff to get the store running. So yes, in
11 order to open the store by ten, I would have to arrive
12 previously and -- yeah.

13 Q. Did you ever leave after the store closed?

14 A. Yes. Unfortunately, because it is a prepaid store.
15 Because, like, to pay in cash, they like to pay their bill
16 payments in cash, sometimes they might just need a last minute
17 phone. Although it was my responsibility to close around 7:59
18 or eight p.m., there was many times where it was that time and
19 there was, you know, more customers in the store. And I would
20 stay and make sure the transactions were completed, and
21 sometimes I would close 8:30, maybe nine o'clock. And then the
22 store is closed to the public, but you still have to do the
23 end-of-day duties, for example, cashing out, making sure there
24 is 150 left in the register, and saving the deposit that needs
25 to be done for the next day. And sometimes some cleaning of

HBDsMED1

Medina - direct

1 the store, trash, and basic things like that. Not to mention,
2 closing the actual store, putting the alarm code, taking the
3 gate down, and all those things.

4 Q. When you used to arrive to this store before it opened,
5 around what time was that?

6 A. Usually around 9:30, sometimes earlier, depending on, like,
7 if I felt it was going to be a busy day. I actually like to
8 start a little earlier to try to get some sales and be able to
9 possibly leave on time rather than later.

10 Q. Did your schedule ever change at any point while you worked
11 at East Communication?

12 A. It changed towards the end when we started to have some
13 disagreements on payment, but other than that, it was pretty
14 stable.

15 Q. Describe what you did when you opened the store each day.

16 A. OK. As I believe I mentioned before each day, I would get
17 to the store, obviously I took public transaction, and there
18 was a lock on the gate. You take the lock off, raise the gate
19 manually -- it was not an electrical gate -- and then I would
20 put the key in the door, open the door. There was an alarm
21 panel, I believe, on the left -- right side of the door, put
22 the alarm code in, deactivate the alarm, walk to the computer
23 terminal, turn them on, log in. There was some log-ins to log
24 into, like, bill payments and processing systems. I believe
25 one of them is called ASAP. I don't know if that has changed.

HBDsMED1

Medina - direct

1 And then once all that was set up, then I would turn the lights
2 on, because I would like to keep them off because most of the
3 times there was actually customers outside waiting because,
4 again, this is a place where a lot of people pay their bills in
5 cash and people are on their way to work, whatever it may be.
6 They wanted to get into the store as quickly as possible. I
7 would turn the lights on, open the door, and get -- you know,
8 do business.

9 Q. Can you describe what you did when you closed the store?

10 A. Closing the store, pretty much the opposite of what I've
11 just described, you know, cash out, which means count all the
12 money in the register, separate the money that is going to be
13 deposited, leave 150 for the next day flow, and close and turn
14 off all the computer systems, put the alarm on, lock the door,
15 close the gate, put the lock on, and proceed to go home.

16 Q. I would like to show the witness Plaintiff's Exhibit 4. Do
17 you recognize this video?

18 A. I do.

19 Q. What is this a video of?

20 A. I believe I was closing at the time to go to lunch, because
21 unfortunately, as I mentioned before, most of the time I was
22 working the store by myself. If you notice closely on the
23 door, I believe there is a sign saying something to the aspect
24 that I'll be back in a few minutes, out to lunch.

25 Q. What did you use to close this door?

HBDsMED1

Medina - direct

1 A. There was a key provided to me by the owner to be able to
2 close the store. As you will notice, there is the lock as well
3 that I used to open and close the store. It is actually placed
4 on there.

5 Q. I would like to admit Plaintiff's Exhibit 4 into evidence.
6 Was there any sort of time system at East Communication to
7 record when you came in in the morning?

8 A. There was, but most of the time it was not functional, or
9 when it was, it wouldn't function properly, like, I had issues
10 logging in and out of it, clocking in and out, so yeah.

11 Q. Where was the time system?

12 A. It was just on a computer terminal. There was no, like,
13 fingerprint reader or any kind of really secure system. You
14 just kind of would click a button and it would say, OK, you're
15 clocked in or you're clocked out. In order for it to know who
16 you were, you just kind of selected your name from, like, a
17 list of names inside the database, I guess.

18 Q. How long after you arrived at the store were you able to
19 punch in through the time clock when it was working?

20 A. As I said, obviously the computers are inside towards the
21 back. As you probably could tell in the video, it's not a huge
22 store, but I do have a disability, so it does take me a little
23 bit longer to move around than others. So I would say about 15
24 to 20 minutes while the computers would have been on, all those
25 kinds of things.

HBDsMED1

Medina - direct

1 Q. Was there any type of communications to be recorded when
2 you left work at the end of the day?

3 A. Not to my knowledge. I guess you could say maybe if there
4 is a some kind of system that would notify the owner when I put
5 the code into the alarm in and out, but that's technically not
6 a clocking-in system.

7 Q. Did you use the time system at East Communication to punch
8 in and out every day that you worked there?

9 A. I did not use it every day. I attempted to use it, but
10 many times it would fail. I would not keep it. Rather,
11 actually, most of the time, I kept my own records of the times
12 that I stepped into the store and left.

13 Q. I would like to show the witness Plaintiff's Exhibit 5.

14 THE COURT: OK.

15 Q. Do you recognize this document?

16 A. No, I don't think I ever seen this before.

17 Q. Do you know what this document is?

18 A. It seems to be some kind of printout of a time sheet,
19 according to what it states on the paper, and it does have my
20 information as an employee, as well as the license number and
21 the Metro PCS brand.

22 Q. OK. Take a moment to review the dates and times on the
23 document. Do these appear to accurately reflect the dates and
24 times that you worked at East Communication?

25 A. I mean, there is a lot of times here, but just from

HBDsMED1

Medina - direct

1 overlooking it, I can tell there is a lot of inaccuracies,
2 although some of them do seem accurate. As I mentioned before,
3 I did use it from time to time. There are many that are either
4 not put into the system or absolutely incorrect.

5 Q. What is an example of one that looks accurate?

6 A. Let's see here. For example, March 31st to March 31st, so
7 in the beginning at 9:52 a.m. and eight seconds and ending
8 8:12 p.m. and 49 seconds on the 31st of March.

9 Q. Are there any examples that you see that don't look
10 accurate?

11 A. Yeah, many, but let me just look for one specifically.
12 Let me see here. For example, on March 26, it claims that I
13 clocked in at 10:35 a.m. and 31 seconds, but then there is no
14 clock-out time. And the next clock in or clock out, I'm not
15 sure what that is, was on March 26 at 11:59 p.m., which
16 obviously I don't believe I was at the store at that time.

17 Q. OK. Did East Communication require you to write in the
18 times you would arrive to work and leave work?

19 A. I don't believe it was a requirement. As I -- as I
20 mentioned before, I kept my own records in order for payment,
21 because I was aware that the system did not work properly, but
22 I don't ever recall signing any documents or coming to an
23 agreement stating that I needed to keep track of my own times
24 in order to be able to get paid properly.

25 Q. Why did you write in the times you would arrive to work and

HBDsMED1

Medina - direct

1 leave work?

2 A. As I just mentioned, I was aware that the system did not
3 work properly, and I felt compelled to look after my well-being
4 and make sure that I was paid what I worked.

5 Q. Did you write down that information from the start of your
6 time working at East Communication?

7 A. On and off. You know, unfortunately, for some time, I
8 didn't really take it too serious because towards the
9 beginning, my pay was accurate, not including the overtime.
10 But towards the end, we started having some disagreements as
11 far as hours that I had worked total, so since I hadn't been
12 diligent, I started to do so around September. I kept track
13 very diligently of the hours worked at that time.

14 Q. That's September 2015?

15 A. Yes.

16 MS. ISAACSON: I would like to show the witness
17 Plaintiff's Exhibit 6.

18 THE COURT: OK.

19 Q. Do you recognize this document?

20 A. Yes, I do. This is -- well, this is a copy of a journal or
21 small book that I started to jot down days and amounts of hours
22 worked, like I said before, starting in September. According
23 to this document, September 1st, 2015.

24 Q. Did you record the total number of hours you worked each
25 day?

HBDsMED1

Medina - direct

1 A. That's correct. I didn't quite put the times because, like
2 I said, they fluctuated. I would rather just put the amount of
3 hours so that when I was going to get paid, it would be easier
4 to add up total hours and say, hey, this is how much hours I
5 worked, you owe me X amount, based on my calculation.

6 Q. Can you turn to the fifth page of this document?

7 A. Is that the final page?

8 Q. It's the second to last page.

9 A. What is the date on the page?

10 Q. I'm sorry?

11 A. What are the dates on the page? I want to make sure I'm
12 correct.

13 Q. The top of the page says 10/26/15.

14 A. OK. Thank you.

15 Q. Can you explain what the records on the bottom of the page
16 are?

17 A. So that was my attempt, again, to keep track of amounts
18 paid. Now, you may notice that some of them are out of order.
19 That's, again, because I was keeping track to my own account.
20 This is not something I had done previously. Normally there
21 are systems in place where the employer kind of allows you to
22 keep track of it digitally or on some kind of document, but
23 because I was also trying to be fair to those who I had worked
24 for, there was some times and dates here that I said, OK, he
25 paid me X amount, but some of them I missed. When I was

HBDsMED1

Medina - direct

1 calculating the amount that I hadn't been paid, I actually went
2 through text messages and old e-mails and said, oh, he did pay
3 me X amount. For example, here, where it says 10:30:15,
4 300 hours, that is what I was paid on that date. But then it
5 goes out of order and I put September 28, 2015, 3:15. Then I
6 put a note next to it, travel, which I believe that meant that
7 he had traveled and maybe Mr. Luis had paid me, that is why I
8 had no record. But after looking through some messages, I
9 found that I had been paid, so we came to an agreement that
10 that money was not owed.

11 MS. ISAACSON: I would like to admit this into
12 evidence as Plaintiff's Exhibit 6.

13 THE COURT: OK. Any objection?

14 MR. CHUN: No objection.

15 THE COURT: It's accepted into evidence.

16 (Plaintiff's Exhibit 6 received in evidence)

17 BY MS. ISAACSON:

18 Q. Did you ever work over your schedule of hours?

19 A. Yes, very often.

20 Q. Did you receive breaks when you worked?

21 A. From time to time, as you saw in the video, I would, with
22 authorization, close the store to take a 30-minute lunch break,
23 but very often, if the store was busy, I was not able to do
24 that because there was no other employee. So, therefore, I
25 would either order take-out or delivery and eat while working,

HBDsMED1

Medina - direct

1 or sometimes not even eat because it was just that busy and I
2 felt obliged to fulfill my duty as the sales associate.

3 Q. How much were you paid initially at East Communication?

4 A. I believe it was about \$9 an hour.

5 Q. Did your pay ever change at any point during your
6 employment?

7 A. Not to my knowledge.

8 Q. Did you ever work more than 40 hours in a week?

9 A. Yes.

10 Q. What were you paid for the hours you worked over?

11 A. Still \$9 an hour.

12 Q. Did anyone at East Communication ever discuss overtime pay
13 with you?

14 A. I don't think so, just that there wasn't going to be given
15 because the fact that they were paying me in cash.

16 Q. How often were you paid?

17 A. I was supposed to be paid weekly, but as I said, although
18 we started off correctly and it did -- we would calculate, oh,
19 you worked 40 hours, 45 hours times nine, it is X amount. As
20 time went by, they started to be negligent as far as payment,
21 and they would only give me one week or a week and a half, but
22 not the full two weeks, or whatever was owed at the time.

23 Q. Were you paid for all of the hours that you worked at East
24 Communication?

25 A. I don't believe so.

HBDsMED1

Medina - direct

1 Q. How many hours were you not paid for?

2 A. I mean, I couldn't tell you off the top of my head, but
3 approximately ten hours, give or take. Not ten hours total,
4 but for per week worked. So let's say if I worked a total of,
5 I don't know, 10 or 20 weeks. I don't know what the total is
6 off the top of my head. If you multiply that by ten, maybe
7 100 hours.

8 Q. Were you paid by cash or check?

9 A. Cash always.

10 Q. Who paid you at East Communication?

11 A. Mr. James Park.

12 Q. Were you ever given any kind of document with your pay?

13 A. Not to my knowledge.

14 Q. Were you ever given any kind of document explaining what
15 your rate of pay was?

16 A. No.

17 Q. You testified earlier that you worked as a representative,
18 correct?

19 A. That is correct.

20 Q. During a typical day at East Communication, would you do
21 anything for the mobile phone store other than make sales?

22 A. Yes. As I mentioned before, it was my responsibility to
23 open and close the store when I was not scheduled to work, as
24 well as do deposits when instructed to do so by either
25 Mr. Park, Luis Yo, or Ms. Colonie, who I don't believe is here

HBDsMED1

Medina - direct

1 today.

2 Q. How much cash would you typically deposit when you were
3 instructed to do so?

4 A. It would vary depending on if the deposits had been done
5 the days prior or how much was, you know, produced overall.
6 But on the low end, maybe \$500. On the high end, if we had a
7 good day the day before or if there was many days that hadn't
8 been deposited for one reason or the other, in the thousands,
9 3,000, 4,000. I would even dare to say maybe 5,000, if it was
10 a busy time.

11 Q. How much sales per day would there be from credit and debit
12 cards?

13 A. Again, that is something that varies because it is mainly a
14 prepaid store. Most people that come into the store actually
15 do it because they want to pay in cash, and those who want to
16 pay by credit or debit usually do transactions either over the
17 phone or online. But it did happen from time to time, mostly
18 debit transactions. I would say about maybe 300 at the most,
19 maybe 1,000, if a person is buying an expensive phone in the
20 store with a debit or credit card. On average, between three
21 to \$500.

22 Q. Are you familiar with any other store?

23 A. Yes. Actually, I believe they owned one in Poughkeepsie on
24 Main Street and one somewhere in New Jersey or Pennsylvania. I
25 don't know the exact address.

HBDsMED1

Medina - direct

1 Q. What were your dealings with the Poughkeepsie store?

2 A. Well, as they mentioned earlier, Colonie was the employee
3 there, and if either Mr. Park or Luis was unavailable and I
4 needed existence in something or if I needed to get a product
5 that was not in stock in the Bronx, New York store, I would
6 call her, as well as the other employee in the New
7 Jersey/Pennsylvania store, and say, hey, I need two or three
8 cases for X phone, or I need X phone because we're out of
9 stock, can you have someone bring it. That was pretty much the
10 dealings.

11 Very rarely, again, only if Mr. James Park or Luis
12 were not available, she might say, hey, don't forget you're
13 scheduled to work X day and things like that, but not often.

14 Q. How often did these happenings with the Poughkeepsie store
15 occur?

16 A. That was actually a very normal occurrence. We were very
17 frequently moving products from one store to the other because,
18 you know, it is a small business. So sometimes it is hard to
19 judge what people want to buy. We would kind of try to buy
20 different products while -- I don't want to say "we."
21 Sometimes we did speak about, you know, what products are
22 needed. When me and Colonie would speak about that or
23 Mr. Park, we would try to get different products for both
24 stores so that we could kind of interchange as needed.

25 (Pause)

HBDsMED1

Medina - direct

1 Q. You mentioned earlier that you were not paid for
2 approximately ten hours every week. How many hours did you
3 typically work each week?

4 A. Well, again, these are approximate, because as you saw from
5 my records, unfortunately, for my own disadvantage, I only
6 started keeping records accurately from September. But I would
7 calculate estimates of 45 to 55 hours of which I was only paid
8 \$9 an hour per hour.

9 Q. Is the 45 to 55 hours how many hours you worked or how many
10 you were paid for?

11 A. No. It is only how many I worked for. Normally, I was
12 only paid for 40 hours, although there were a few times that I
13 did get paid for 45.

14 Q. What's the most amount of hours you were ever paid for?

15 A. I believe the most amount of hours I was ever paid for was
16 45 while working 55 many times.

17 THE COURT: How many times were you paid for 45 hours
18 a week?

19 THE WITNESS: I would say mostly -- because, as I
20 stated before, I worked just about six days a week. So six
21 days a week times ten hours, 60 hours, give or take. Sometimes
22 the store, for example, on Sundays, we would close earlier. So
23 it doesn't -- it wouldn't account for the ten hours. About 55
24 would be the normal week worked, but sometimes there was times
25 there was other employees that worked or I would get a day off

HBDsMED1

Medina - cross

1 more than usual. So sometimes I would work five days,
2 sometimes I worked six. If I worked five, then it would be
3 about 45. But if I worked the six, it would be about 55 total.

4 MS. ISAACSON: No further questions.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MR. CHUN:

8 Q. Mr. Medina, good morning.

9 A. Morning.

10 Q. How did you come to work for East Communication, Inc.?

11 A. Do you mean how I arrived, like, how I actually got to the
12 location?

13 Q. OK. You said you started working there in February of
14 2015.

15 A. Um-hmm.

16 Q. Did you answer an ad or were you referred by a friend to
17 this position? How did you come to know about this position?

18 A. Well, actually, I believe a friend of mine -- well,
19 actually, she was an ex-employer, I would say, to be accurate.
20 So she was my previous boss and she referred me to Mr. Park.
21 She said, hey, there is another job opening that might provide
22 more hours. At the time, that other job, which was in the
23 area, didn't provide stable hours and I was looking for
24 something a little bit more stable.

25 Q. OK. When you say you were working, where were you working

HBDsMED1

Medina - cross

1 here before you started working?

2 A. C&C Market Research, which is also located in the Bronx.
3 Actually, pretty close to the Metro location.

4 Q. Well, how close?

5 A. I would say, like, two blocks. Actually, funny enough,
6 they started off in that location, then had moved next door,
7 and then eventually they moved about -- you would kind of say
8 across the street next to an Applebee's, which is where they
9 are currently located now.

10 Q. When you say they, C&C Market Research?

11 A. C&C Market Research, yes.

12 Q. So when you were working for C&C Market Research, that was
13 within the same --

14 A. Same mall area or same radius, you could say.

15 Q. OK. That C&C Market Research, were you responsible for
16 opening and closing?

17 A. Sometimes, yes. But most of the time, I worked as what
18 they would call field supervisor. So just to provide some
19 background on what C&C Market Research is and what I did
20 there --

21 Q. That is not necessary at this point.

22 A. OK. No problem.

23 Q. So then your ex-employer recommended you to work here at
24 East Communications, Inc., because you were seeking how many
25 hours to work at the time you were thinking about leaving C&C

HBDsMED1

Medina - cross

1 Market?

2 A. Well, when this occurred, I was only part-time at C&C, and
3 I was looking to increase the amount of hours worked to
4 full-time.

5 Q. So part time, you mean how many hours?

6 A. Between 25 to 30.

7 Q. And how were you paid?

8 A. I was paid on the books by check or direct deposit.

9 Q. OK. Then you had a meeting with Mr. Park regarding working
10 at East Communications, Inc., is that correct?

11 A. I believe so, yes. I recall an interview, not necessarily
12 a meeting.

13 Q. OK. An interview. Were you hired on the day of the
14 interview?

15 A. No, I don't believe so. I believe we spoke and he said he
16 would think about it, and then I approached him again, and I
17 think he said, yes, we'll move forward.

18 Q. When you say you spoke, for this initial interview, this
19 was a face-to-face interview?

20 A. Yes. We spoke -- at the store.

21 Q. Thank you. Did it take place in the store?

22 A. Yes.

23 Q. OK. During this first interview, your first meeting with
24 Mr. Park --

25 A. Um-hmm.

HBDsMED1

Medina - cross

1 Q. -- was the topic of hours to be worked discussed?

2 A. He didn't mention a specific number, but he did say that he
3 was looking for someone full-time.

4 Q. OK. During the initial interview, was there a discussion
5 about hourly pay?

6 A. He mentioned that he would prefer to pay in cash, and that
7 because of that, he would only be able to pay \$9 an hour
8 because I was also not being taxed.

9 Q. OK. You accepted this?

10 A. Well, like I said, I was looking to make a living and I
11 needed more hours, so yes. I accepted it at that time.

12 Q. OK. Before you started working, did you know what your job
13 was going to entail?

14 A. Actually, I had never worked in a phone store previously.
15 It was my second job, so no. They kind of had to show me the
16 ropes and train me what to do and what not to do.

17 Q. OK. One of the first things they taught you was opening
18 the store with the gate, is that correct?

19 A. I believe so, yes.

20 Q. You knew at the time that around February, that it was a
21 manual gate, is that correct?

22 A. Yes.

23 Q. In February, did you express any concern about the metal
24 gate to anybody working on behalf of East Communications, Inc.?

25 A. Not to my knowledge, but I don't think that is why we're

HBDsMED1

Medina - cross

1 here today.

2 Q. Thank you.

3 Now, when did you first become aware of the clock in
4 and clock out of the store?

5 A. Like I said, towards the end of my employment, because when
6 I got there and they showed me procedures such as clocking in
7 and clocking out, logging in and out, shutting down the
8 computers, all that, end-of-day procedures, etc., it was
9 working at that time.

10 Q. OK. Was it working in February when you started?

11 A. To my knowledge, yes.

12 Q. What is the systems, is that like some kind of a card you
13 have to insert?

14 A. No. It was basically a desktop computer with a screen
15 connected to it, and the program on the screen where you would
16 select your name, log in, and then I just click clock in or
17 clock out, no by mention or special other equipment.

18 Q. Is there a password?

19 A. I believe so. I don't remember specifically. It was a
20 while back. There might have been one.

21 Q. Did you create the password?

22 A. Actually, I believe it was given to me. I don't believe I
23 created the account. The information was provided to me, if
24 there was one.

25 Q. So you started working. When you were first working, it

HBDsMED1

Medina - cross

1 was just you and Mr. Park or Mr. Yo?

2 A. It was me, Mr. Park, Mr. Yo, and also Ms. Colonie-Flores.
3 She provided some, if not a lot, of the training.

4 Q. OK. About how much training did you receive?

5 A. I would say about a week's worth. About a week's worth.
6 They showed me calculations and how to --

7 Q. Thank you. After the week's worth, then were you working
8 by yourself at the store?

9 A. I don't think it happened that quickly. I think that they
10 were kind of in the store with me. Once they saw that I was
11 able to do transactions, then yes, I started working by myself.

12 Q. OK. Now, do you recall the date that you started working
13 here at East Communications, Inc.?

14 A. The exact date, no, but I believe it was around
15 February 21st, 2015.

16 Q. February 21st. Now, when you say you were paid weekly, was
17 that your understanding when you were hired?

18 A. Yes. The understanding was that I would be paid weekly.

19 Q. What day of the week was that to be paid?

20 A. Normally, I believe, Saturdays, but it did change.

21 Q. All right. So were you paid the first week that you were
22 there?

23 A. I believe so. I don't think he took any kind of deposit
24 or, like, you know, sometimes they keep pay. I don't think so.
25 I think he paid me.

HBDsMED1

Medina - cross

1 Q. All right. So the first Saturday after you worked, were
2 you paid?

3 A. I believe so, yes.

4 Q. Do you recall?

5 A. Well, it was about two years ago at this point, so I don't
6 recall specifically, but I did get paid at the beginning, as I
7 mentioned before, so I am assuming that he did.

8 Q. OK. We are just going to go through week by week.

9 A. OK.

10 Q. The first week that you worked, you got paid. You got paid
11 in full?

12 A. In full, yes. At that time, I wasn't working overtime.

13 Q. Do you recall how many hours you worked the first week?

14 A. Under 40 hours at that time.

15 Q. Do you recall exactly how many hours?

16 A. Not exactly, but I would say about 30 to 35.

17 Q. And you say that based on what?

18 A. Based on the fact that I was in training at that time.

19 Q. OK.

20 A. And there was other people in the store with me.

21 Q. How many hours were you working per day that you were there
22 the first week?

23 A. The first week, not a full day. I would only go in for
24 maybe five, six hours, get trained, and then either Colonie,
25 Mr. Yo, or Luis would end out the day.

HBDsMED1

Medina - cross

1 Q. Was it like that for the first week?

2 A. You could say that.

3 Q. How many days did you work the first week?

4 A. Again, I don't remember exactly. I would say probably four
5 to eight out of seven.

6 Q. OK. Four days out of seven and was that about five to six
7 hours each of those days?

8 A. Yeah, that sounds about right.

9 Q. And you kept no record of your first week?

10 A. Not at that time. I didn't feel the need because they had
11 shown me the clock-in and clock-out system and they were there
12 present as well.

13 Q. OK. Now, the second week that you worked, which takes us
14 to -- we'll just go with March.

15 A. OK.

16 Q. Month of March, 2015. Do you recall how many hours you
17 worked that month?

18 A. I would say at least 40.

19 Q. At least 40?

20 A. A week.

21 Q. OK. What was the policy regarding overtime?

22 A. To my knowledge, there was never any policy provided.

23 Q. OK. Did you ask anybody from East Communication, Inc., if
24 you could work overtime?

25 A. I didn't ask. I was just instructed to do.

HBDsMED1

Medina - cross

1 Q. Thank you.

2 MR. CHUN: Move to strike everything after I don't
3 think so.

4 THE COURT: No, he was answering your question.

5 Q. OK. Were you paid for the month of March?

6 A. I was paid for normal hours worked, not including overtime.

7 Q. How many hours did you work overtime?

8 A. I couldn't tell you exactly. That was a while ago, but as
9 I mentioned before, if I worked 45, I would only get paid 40.

10 Q. What proof do you have of working 45 hours for the month of
11 March 2015?

12 A. I have no proof.

13 Q. Thank you.

14 A. But I don't believe you guys have anything against that
15 either.

16 Q. OK. So the first week of March, do you believe that you
17 worked more than 40 hours?

18 A. Not the first week because, again, I was still under
19 surveillance or being monitored. I wasn't there by myself the
20 whole time.

21 Q. Were you paid for that first week of March?

22 A. Yes.

23 Q. OK. Who gave you the cash?

24 A. Mr. James Park.

25 Q. OK. You were OK with the amount that you received?

HBDsMED1

Medina - cross

1 A. At that time, yes. It was accurate to the hours I worked.

2 Q. OK. Now, the second week of March, do you recall how many
3 hours you worked that week?

4 A. I think it still remained around the 40-hour mark.

5 Q. There was ten hours a day for four days a week?

6 A. Yes. I was working four days and someone else would work
7 in the store for two days.

8 Q. That second week in March, 40 hours, four days a week, you
9 were the only one in the store?

10 A. I believe once I was given the key, I'm not sure if it was
11 the second week of March, but once I was given the key, I was
12 pretty much in the store by myself as I worked.

13 Q. OK. Do you recall, when you received the key, that you
14 would then be able to start working by yourself?

15 A. Let's see. It wasn't during the first week of training and
16 I don't believe it was the week after. Maybe either end of
17 March or beginning of April.

18 Q. For the second week of March, did you work more than
19 40 hours?

20 A. I don't believe so.

21 Q. OK. Were you paid for the second week of March?

22 A. Yes, I was.

23 Q. Were you paid in full?

24 A. Yes.

25 Q. Did you receive anything other than cash for these now

HBDsMED1

Medina - cross

1 three weeks that you have been working?

2 A. No.

3 Q. Did you request any receipt or written documentation
4 regarding the hours that you worked?

5 A. I did, actually.

6 Q. OK. Did you request that in writing?

7 A. Well, I requested it and I was told that it wasn't possible
8 because they had already started to pay me in cash.

9 Q. OK. You were OK with this?

10 A. Well, given the alternative, possibly being fired if I
11 chose to argue, yes.

12 Q. OK. Now we'll move to the third week in March. Do you
13 recall how many hours you worked?

14 A. Again, I believe at that time it still remained within the
15 40 hours.

16 Q. That was four days a week, ten hour shifts, is that
17 correct?

18 A. Yes.

19 Q. Now, was your understanding that you were going to work ten
20 hours each shift?

21 A. Yeah. It was explained to me that once I was trained, I
22 was going to be what is called in the business a one-man store
23 for the most part.

24 Q. Was it your understanding that it was going to work ten
25 hours or nine hours plus a lunch break of one hour?

HBDsMED1

Medina - cross

1 A. My understanding was that I was to work from opening to
2 close with a 30-minute break that I was unable to take most of
3 the time.

4 Q. OK. For that 30-minute break, were you paid?

5 A. Well --

6 Q. Strike that.

7 For the 30-minute break, did that count towards the
8 ten hours?

9 A. I believe so, yes.

10 Q. For the third week in March, which is now the fourth week
11 overall that you worked, were you paid in full for that week?

12 A. Yes.

13 Q. OK. Now, for the first four weeks of your employment, did
14 you make any deposits of your money that you received into the
15 bank?

16 A. My money? Possibly. At that time I had, I believe, a
17 Chase account. So yeah, I wouldn't see why I wouldn't.

18 Q. Did you produce those deposits to your attorney?

19 A. No. Unfortunately, they don't go -- those records don't go
20 back that far and I didn't have any pre amount.

21 Q. All right. For the fourth week in March, do you recall how
22 many hours you worked?

23 A. Again, probably still 40 hours. It took a while for me to
24 start working more than that.

25 Q. Were you paid in full for the month of March -- I'm sorry.

HBDsMED1

Medina - cross

1 For that fourth week in March, were you paid in full?

2 A. Yes.

3 Q. OK. Now into April.

4 Wait a minute. You noted here, when you were shown
5 Plaintiff's Exhibit 5, you noted that March 26, 2015, that
6 entry appeared to be wrong, inaccurate?

7 A. Yeah.

8 Q. How is it inaccurate?

9 A. It's pretty -- obviously, I didn't have it in front of me
10 at the time --

11 THE COURT: Can we give the witness the exhibit so he
12 doesn't have to recall.

13 A. OK. Thank you.

14 You said March 26, correct?

15 Q. Yes.

16 A. I'll read it verbatim, as I am sure you guys are looking at
17 it as well. It says I clocked in at 10:35 and 31 seconds,
18 which would actually mean I was late, and then it states that
19 I clocked out that same day at 11:59 p.m., which if I am not
20 mistaken that is almost midnight, and obviously I was at home
21 at that time.

22 Q. OK. Were you still using the password to log in and log
23 out of your times in the month of March?

24 A. Well, I can't say for certain because, again, as I stated
25 many times before, this was a while back ago, and I don't think

HBDsMED1

Medina - cross

1 anyone can say for certain in a two-year span what they did a
2 certain date, but from what I recall, once you inputted the
3 information, if there was no one else logging in and out, the
4 system did not request for you to input the password. But that
5 could be incorrect.

6 Q. Did you bring that up with Mr. Park or Mr. Yo?

7 A. I did mention to them a few times that the system was not
8 working properly or that I wasn't able to log in or out
9 correctly.

10 Q. What was done about that?

11 A. They said that they would repair the system, but they never
12 did.

13 Q. Do you have any proof of that?

14 A. No, I do not.

15 Q. OK. Now we're into April, the first week of April.

16 A. OK.

17 Q. Do you recall how many hours you worked that week for East
18 Communication, Inc.?

19 A. As I stated before, I believe at that time I was given the
20 keys and the code to the lock and the code to the alarm. So at
21 that time, I believe I started working over 40 hours.

22 Q. OK. Do you have any proof of that?

23 A. No, other than my word.

24 Q. So were you paid for that week, the first week in April,
25 for the hours that you worked?

HBDsMED1

Medina - cross

1 A. For the total hours? I don't believe so.

2 Q. You don't believe so. How much were you paid the first
3 week?

4 A. I believe I was only paid for 40 hours.

5 Q. You don't have a deposit slip or any proof of what you
6 received for the first week of April, is that correct?

7 A. No, I do not.

8 Q. You didn't start logging your hours by hand the first week
9 of April, is that correct?

10 A. No, I did not because I had confidence that my employer was
11 going to fix the system.

12 Q. OK. What do you mean "to fix the system," fix this
13 entering --

14 A. The clock-in system.

15 Q. OK.

16 A. Because at the time I was only paid the 40 hours because
17 the system was inaccurate, so we had to agree that we would
18 kind of call it even.

19 Q. What do you mean that you would agree that you would call
20 it even?

21 A. Me and Mr. Park would always speak, since he was the one
22 who paid me. And I said, hey, I worked about 45 hours, you
23 know, there is some overtime that you owe me. And he said, oh,
24 well, the system had some inaccurate clock-in times. I
25 actually believe I owe less. So I said, OK, why don't we call

HBDsMED1

Medina - cross

1 it even and just pay me for a full normal week.

2 Q. That is what you received?

3 A. That is what I received.

4 Q. You're saying this now under oath, that you agreed to the
5 amount to be paid to the equivalent of 40 hours a week?

6 A. For that week only.

7 Q. For that week only?

8 A. For that particular instance.

9 Q. For that week only. Thank you.

10 Now, for the second week of April, do you recall how
11 many hours you worked?

12 A. Again, at that time, I think I was working more than
13 40 hours.

14 Q. OK. Do you have any proof of that?

15 A. As I stated, no, I do not.

16 Q. OK. Were you paid for the second week of April?

17 A. I was paid 45 hours at \$9 an hour.

18 Q. How many hours did you work?

19 A. The 45.

20 Q. Did you get paid for the overtime for what you say is about
21 five hours?

22 A. No, sir.

23 Q. No?

24 A. Only \$9 per that extra five hours.

25 Q. OK. You weren't paid that the following pay period?

HBDsMED1

Medina - cross

1 A. I was paid the following pay period, but not related to
2 anything prior, just what I was owed for the next week.

3 Q. OK. So then are you saying that starting from the second
4 week of April, then you didn't get paid for your overtime wage,
5 is that correct?

6 A. Yes, I think that would be correct.

7 Q. OK. Now, for the third week of April, do you recall how
8 many hours you worked?

9 A. Again, probably 45.

10 Q. OK.

11 A. That was the normal workweek, if I wasn't asked to work an
12 extra day.

13 Q. That's based on what, Mr. Medina?

14 A. That is based on the fact that I worked four to five days
15 a week, sometimes six, and the typical week was working five
16 having two days off. While working five, sometimes I would
17 work five days, which were ten hours a day, which would
18 actually equate to 50 hours total. But then sometimes I would
19 work on a Sunday for one of those fifth days, and Sundays we
20 didn't open as late. We only opened from 12 to six. So,
21 therefore, the store was opened for about five hours only, and
22 the other 40 hours that I worked, so therefore it would be
23 about 45.

24 Q. OK. How much were you paid for that week?

25 A. Again, any time that I was paid, I was not paid overtime.

HBDsMED1

Medina - cross

1 I was only paid \$9 an hour.

2 Q. Were you paid the equivalent of \$9 an hour for 45 hours?

3 A. Yes.

4 Q. What about now the fourth week of April, how many hours did
5 you work for that week?

6 A. Same as previously. 40 hours, 45 if I was asked to work an
7 extra day.

8 Q. Were you asked to work the extra day for the fourth week of
9 April?

10 A. It's possible because I was at the time the only other
11 employee other than the bosses or owners themselves.

12 Q. Do you have any proof that you worked six days, where the
13 fifth day for the fourth week of April?

14 A. I myself don't have any proof, but if I sat here and maybe
15 looked through these time sheets, I could probably confirm
16 that. Like I said, although the system didn't always work and
17 it did work from time to time.

18 Q. It did work from time to time. How did you know that it
19 worked from time to time?

20 A. I would use it every day. Sometimes it just wouldn't clock
21 me in or clock me out and sometimes it would. Therefore, it
22 worked from time to time.

23 Q. OK. Did you keep a note or write an e-mail to your
24 employer?

25 A. Just a phone call and say, hey, I clocked in today at

HBDsMED1

Medina - cross

1 whatever time and the system wasn't working properly.

2 Q. OK. Now, for the fourth week of April then, how much were
3 you paid?

4 A. The 40 hours.

5 Q. Did you work 40 hours or 45 hours?

6 A. Like I said, I don't recall for certain, but it is possible
7 I worked the between 40 to 45 hours. If I had to pick, I would
8 say 45.

9 Q. OK. So then that means that if you're picking, then for
10 the month of April, that's 15 hours worth of the -- I guess the
11 half, it would be \$4.50 for 15 hours?

12 A. Yeah, sounds correct.

13 Q. That's \$67.50. Did you ask for that money in the end of
14 April?

15 A. I don't believe I did.

16 Q. OK. Would you say that for the month of April then that
17 your relationship with East Communication was OK with respect
18 to payment?

19 A. I felt good to work there. I didn't have any issues with
20 the employment, but I was concerned that I wasn't being fully
21 paid at the time.

22 Q. What do you mean by when you say you didn't have any
23 concerns with employment? What does that mean?

24 A. Well, meaning, like I said, I was pretty new to the job
25 and, you know, things were going well. I was selling. You

HBDsMED1

Medina - cross

1 know, I had responsibilities. So given that this was my second
2 job, I felt good that I was able to, in a sense, manage a store
3 even though I didn't have that title.

4 Q. OK. We'll take it a little further back. When you say you
5 had no concerns, had no concerns with opening the gate?

6 A. No, opening the gate never bothered me. That is not why
7 we're here today.

8 Q. OK. You had no concerns with unlocking the door and
9 deactivating the alarm?

10 A. No. Again, that is not why we're here.

11 Q. You had no concerns with turning on the computers and
12 logging in?

13 A. Well, I had a concern that the clock-in system was not
14 working properly, but it wasn't a difficult task to accomplish.

15 Q. All right. Did you have any concerns about working there
16 by yourself?

17 A. Not at first, but as I started to relate more with the
18 clients and some of them became hostile, and I did become
19 concerned.

20 Q. Now, before you cash out and do your end-of-day business,
21 was the policy to lock this door first to prevent other people
22 from coming in?

23 A. Yes, that's correct.

24 Q. OK.

25 A. And that was done.

HBDsMED1

Medina - cross

1 Q. Now we'll turn your attention to the month of May,
2 Mr. Medina.

3 THE COURT: I think you skipped a week in April.
4 There is actually five weeks, the week starting Sunday,
5 April 26.

6 BY MR. CHUN:

7 Q. For the last week of April, do you recall how many hours
8 you worked?

9 A. Again, if I had to choose, I would say 45.

10 Q. Were you paid 45 hours?

11 A. At \$9 an hour, I was paid for 45 hours, yes.

12 Q. OK. So then is it correct to say that for the month of
13 April then, you were paid 20 hours' worth of the overtime of
14 the half, or in other words, \$90 for the month of April, is
15 that correct?

16 A. I'm sorry. Can you clarify that? I didn't understand.

17 Q. For the month of April, you worked 20 hours of overtime?

18 A. Yes.

19 Q. You were only paid at the normal hourly rate, not the
20 overtime rate, is that correct?

21 A. That is correct. By normal, if you mean \$9 an hour?

22 Q. \$9. When you were supposed to be paid 13.50, is that
23 correct?

24 A. Well, I don't know. You did the calculation, not me, but I
25 assume so.

HBDsMED1

Medina - cross

1 Q. OK. You continued to work at East Communication?

2 A. Yes.

3 Q. Now, for the month of May, do you recall how many hours you
4 worked for the first week?

5 A. Again, if I had to choose, I would say 45 at that time.

6 Q. OK. How much were you paid?

7 A. 45 hours times \$9 an hour.

8 Q. For that first week of May, were you the only one in the
9 store when you were working?

10 A. Yes. I would definitely say by that time I had "proven
11 myself" and I kind of had the responsibility on my shoulders of
12 making sure the store worked properly.

13 Q. OK. What about for the second week of May, do you recall
14 how many hours you worked?

15 A. Again, probably 45 in the morning to 50, as I was working
16 there more often, starting to stay later, open earlier to try
17 to get more sales.

18 Q. All right. How much were you paid for the second week of
19 May?

20 A. As I'm unsure exactly how many hours I worked, I would have
21 to go with the stable 45 hours at \$9 an hour.

22 Q. But you're unsure of the second, third, fourth, fifth week
23 of April as well, that's the first thing, you're unsure about
24 the hours that you worked, is that correct?

25 A. No, I don't believe so. I said if I had to choose, I would

HBDsMED1

Medina - cross

1 say 45. The only reason why I am unsure of those hours by your
2 statement is because it was a long time ago, not because I
3 believe I worked. If anything, I might have worked more.

4 Q. OK. But you kept no log for your own personal accounting
5 of the hours that you worked for the month of May 2015, is that
6 correct?

7 A. No. At that time, I was not keeping a record.

8 Q. OK. You stated that you were paid 45 hours at \$9 an hour
9 for the second week of May, is that correct?

10 A. Yes, it is.

11 Q. What about for the third week of May, how many hours did
12 you work there, Mr. Medina?

13 A. Well, being that the weather was getting warmer and we were
14 getting into the summer seasons and there was some sales at
15 that time, there usually are, for phone companies at that time,
16 I believe I started working more, about 50 hours.

17 Q. How many hours were you paid for that third week of May?

18 A. I would say 50 hours at \$9 an hour.

19 Q. What about for the fourth week of May, Mr. Medina, how many
20 hours did you work?

21 A. I would say, again, probably 50 at that time.

22 Q. And you were paid for 50 hours?

23 A. Yes, at \$9 an hour.

24 Q. So is it correct to say that for four weeks in April and
25 four weeks in May, you did not receive the overtime wage that

HBDsMED1

Medina - cross

1 you were supposed to receive?

2 A. That is correct. I also did not receive any documents or
3 pay stubs.

4 Q. OK. You continued to work there at East Communications,
5 Inc., is that correct?

6 A. Yes. I mean, I was making a living and it was a job that I
7 was capable of doing at the time, so...

8 Q. And no disagreements or no issues with the employer through
9 the end of May?

10 A. At that time, no. He was paying me properly, except for
11 the fact of not paying me the overtime.

12 Q. So then what did you do about the overtime?

13 A. Well, if you want me to be honest, I am under oath, so at
14 that time, I wasn't aware that he should have been paying me
15 overtime, because my previous job, I didn't work full-time. I
16 never reached 40 hours, much less overtime. I didn't know that
17 I was supposed to be being paid more at that time.

18 Q. Now, what about for the first week of June, do you recall
19 how many hours you worked?

20 A. Again, I would have to lean towards 50, possibly more. The
21 warmer it got, the more we were able to stay open. Let's not
22 forget also, as well, during the summertime, the sun is out
23 longer. So, you know, around eight 39 o'clock, it wouldn't be
24 as dark, so we would stay open if the business was booming at
25 the time.

HBDsMED1

Medina - cross

1 Q. OK. Did you receive instructions from James Park to stay
2 open?

3 A. Directly, no. Like, I don't believe he said, oh, make sure
4 you stay until nine. But he did state, if there is customers
5 in the store, make sure you finish any transactions, obviously,
6 before asking customers to leave. It is not normal practice to
7 say, hey, it's 8:00, you know, get out of the store. We would
8 normally finish with customers inside of the store, process
9 transactions, and then proceed to close the store and lock the
10 door and do the end of daily proceedings.

11 Q. For each transaction, did you have to log in your pass
12 code?

13 A. No.

14 Q. Did you have to log in anything when you had to make a
15 sale?

16 A. I believe there was something called RQ, and that did keep
17 track of inventory, but I don't believe there was a way to keep
18 track of sales, per se, as far as the system.

19 Q. Do you recall how many hours you worked for the second week
20 of June?

21 A. Again, as the weather was getting warmer at that time, I
22 believe I started to work more hours. I would say 50 hours for
23 that week.

24 Q. 50 hours. For the first two weeks in June, you were paid
25 50 hours at \$9 an hour, is that correct?

HBDsMED1

Medina - cross

1 A. Yes.

2 Q. You're positive that you received the amount of \$450 for
3 the first two weeks of June each week?

4 A. Yes, sir.

5 Q. OK. What about for the third week of June, how many hours
6 did you work, Mr. Medina?

7 A. Probably the same.

8 Q. Probably the same.

9 A. So if you want me to state it, 50 hours times \$9 an hour.

10 Q. And how much were you paid?

11 A. Well, according to your calculation, I believe you said
12 4.50.

13 Q. So is that correct?

14 A. Yes, I would say so.

15 Q. What about for the fourth week of June, how many hours did
16 you work at the store?

17 A. Once again, I believe it would probably be 50 and at \$9 an
18 hour per hour.

19 Q. 4.50. Now, for the month of June 2015, you have no deposit
20 slips or no bank records --

21 A. No.

22 Q. -- of the monies that you made?

23 A. No.

24 Q. Did you put the monies that you earned for the month of
25 June, did you put that into a bank account?

HBDsMED1

Medina - cross

1 A. To be honest, like I said, although I did have a bank
2 account, it's possible I might have put some of it. The rest I
3 might have maybe used towards a credit card or just paid a bill
4 in cash, not necessarily put it into the bank account.

5 Q. Do you have any receipts or anything to show payments that
6 you made for the month of June, 2015?

7 A. No. I wasn't asked to provide that information.

8 Q. Now, I'll turn your attention to the week of -- the first
9 week of July. Do you recall how many hours you worked?

10 A. Given that -- I'm not sure, but I believe the fourth of
11 July is in the first week of July. So at that time, we had
12 sales going on and I had been working for a few months. So I
13 believe at that time, I started working 55, possibly even 60
14 hours a week. Not necessarily by myself, because when it got
15 to these busier times when we had deals, sometimes Mr. James
16 Park would be in the store or Mr. Luis Yo or maybe even both,
17 if the store was busy enough.

18 Q. OK. Do you recall in the month of July when both Mr. Park
19 and Mr. Yo were in the store with you?

20 A. Not a specific day, but I do believe that they might have
21 been around fewer hours here and there to assist with sales and
22 other proceedings.

23 Q. How much were you paid for the first week of July?

24 A. That is when I believe they only started paying me maybe 45
25 at the most 50 hours at \$9 an hour, but I was working more than

HBDsMED1

Medina - cross

1 that.

2 Q. OK. What about for the second week of July, how many hours
3 did you work?

4 A. Although the sales had probably ended by that time, it was
5 still a busy time. People were buying phones to, you know, go
6 out or possibly travel. Those phones worked in -- the service
7 worked in Santo Domingo, Dominican Republic, although the
8 people would buy them to use while they were traveling. I
9 believe I also worked between 55 and 60 hours at \$9 an hour.

10 Q. How many hours were you paid?

11 A. Again, unfortunately, a lot of those hours were not being
12 acknowledged, so I believe I was only paid 45 hours, maybe 50.

13 Q. Do you know how much you actually received for the second
14 week of July worked?

15 A. Not for certain, but if I had to choose a specific number,
16 I would probably say 50 times \$9 an hour.

17 Q. For the third week of July, Mr. Medina, how many hours did
18 you work?

19 A. Well, I believe at that time, you know, it would have
20 slowed down a little bit. That holiday rush from the July 4
21 deals would have calmed down. At that time, I think I went
22 back to 45 hours for the week at \$9 an hour.

23 Q. How much were you paid?

24 A. I was paid for 45 at \$9 an hour.

25 Q. What about for the fourth week of July, Mr. Medina, how

HBDsMED1

Medina - cross

1 many hours did you work?

2 A. Again, at that time, probably slowed down, so 45 hours
3 times \$9 an hour.

4 Q. When you say probably, so for the last third week, third
5 and fourth week of July, you said probably. Do you know for
6 sure?

7 A. I can't say for certain. I am going off of the fact of how
8 sales would be, and sales usually affected the amount of time
9 the store would be open as a total over the regularly scheduled
10 time.

11 Q. How many hours were you paid for this fourth week of July?

12 A. I believe I was paid 45 hours at \$9 an hour.

13 Q. You still had not recorded your own personal log of hours
14 worked, is that correct?

15 A. No, not at that time.

16 Q. Now we're into August.

17 THE COURT: There is one more week in July.

18 MR. CHUN: Thank you.

19 Q. So for the fifth week of July, do you recall how many hours
20 you worked?

21 A. Again, I would probably say stick to 45 hours. At that
22 time, I mean, I was pretty much running the store on my own.

23 Q. How many hours were you paid?

24 A. I was paid for 45 hours at \$9 an hour.

25 Q. For the month of July, who paid you the money?

HBDsMED1

Medina - cross

1 A. Mr. James Park.

2 Q. OK. He paid you on Saturday?

3 A. Yes.

4 Q. OK. So you sat down with him for the month of July each
5 Saturday. Was Saturdays the day that you worked?

6 A. Yes. I didn't normally work Saturdays, and sometimes I was
7 off on Sundays, so that is why he chose to pay me on Saturday
8 versus Sunday.

9 Q. I see. So that would be your last day of the week. So
10 your work day was typically Monday through Saturday, is that
11 correct?

12 A. Yes, with, let's say, maybe a Thursday and a Sunday off.

13 Q. OK. Understood. You told Mr. Park how many hours you
14 worked each week or the month of July, and each time he paid,
15 he paid you just 45 to 50 hours paid at \$9 an hour for the
16 first two weeks, and \$45 an hour for the third through fifth
17 weeks in July, is that correct?

18 A. I'm sorry. I think you misspoke. You said \$45 an hour. I
19 never made that.

20 Q. 45 to 50 at \$9 an hour for the first week of July, he gave
21 you that money?

22 A. Yes.

23 Q. OK. But you can't recall how much it actually was?

24 A. Well, you can do a simple calculation, and if you do that,
25 it should be that amount.

HBDsMED1

Medina - cross

1 Q. How do we do the calculation?

2 A. Well, as me and Mr. James would do when we would sit down,
3 you go, OK, you worked 45 hours, 45 hours timed \$9 an hour
4 equals, you know, whatever that is. I believe 450, maybe 400.

5 Q. By the end of July, did you ask Mr. Park regarding the
6 overtime amount that you were supposed to be paid for April,
7 May, June, and July?

8 A. Actually, at that time, I was still not aware that I was
9 supposed to be receiving overtime pay as well as any kind of
10 other documentation.

11 Q. OK. Now, turn your attention to August then, the first
12 week of August. Do you recall how many hours you worked?

13 A. I would say 45 hours times \$9 an hour.

14 Q. That is how much you were paid?

15 A. I believe so.

16 Q. Well, do you know?

17 A. I don't know for certain, as I don't have a pay stub to
18 prove that, but I would say, based on my recollection, yes.

19 Q. For this first week of August now?

20 A. Um-hmm.

21 Q. Did you deposit the money that you earned into an account?

22 A. As I have stated before, as the money was given in cash,
23 sometimes I would just use it maybe for a cab or personal
24 bills, so I didn't necessarily deposit all of it at the moment
25 that I received pay.

HBDsMED1

Medina - cross

1 Q. OK. So then let's turn your attention now just to the
2 first week of August.

3 A. OK.

4 Q. First week of August, did you deposit any of your money
5 that you made into an account?

6 A. Yeah, probably some of it.

7 Q. Probably. OK. Do you recall which account?

8 A. Into a Chase Bank account.

9 Q. Do you have the receipts or the account information for
10 this period?

11 A. No, I do not, unfortunately.

12 Q. No. OK. Now, for the second week of August, how many
13 hours did you work that week?

14 A. I would still say about 45 hours a week times \$9 an hour.

15 Q. That is how much you were paid?

16 A. Yes.

17 Q. You know that for a fact?

18 A. As I stated before, as I know him having proof, I can't
19 state for a fact as I am under oath, but I would say, based on
20 my recollection, yes.

21 Q. OK. Now, for the third week of August, how many hours did
22 you work?

23 A. Again, I would state 45 times \$9 an hour.

24 Q. Is that how much you were paid?

25 A. I believe so, yes.

HBDsMED1

Medina - cross

1 Q. Well, you believe so meaning is your recollection for the
2 third week better than the second week?

3 A. Actually, no, but since you insist on asking the same
4 questions, I am going to provide you with the same answer,
5 which is I don't remember. So, therefore, I can only go to the
6 best of my recollection.

7 Q. OK. So the best of your recollection is for the second and
8 the third week of August, you worked 45 hours and you were paid
9 \$45 an hour times \$9?

10 A. Actually, you misspoke again. You said \$45 an hour. I was
11 never paid \$45 an hour. I was paid \$9 an hour for 45 hours.

12 Q. That is your recollection for the second and third week of
13 August?

14 A. Yes.

15 Q. For the fourth week of August, do you recall how many hours
16 you worked?

17 A. Again, I would say 45 hours times \$9 an hour.

18 Q. How much were you paid?

19 A. I was paid for those 45 hours worked at \$9 an hour.

20 Q. What about now into September, the first week of September,
21 Mr. Medina, do you recall how many hours you worked?

22 A. I don't recall, but based on my record, I can probably give
23 you that information.

24 Q. OK. You have a record?

25 A. Yes. In September was when I started to document -- we are

HBDsMED1

Medina - cross

1 in September, correct?

2 Q. Yes, first week of September.

3 A. So for the first week of September, based on document
4 Exhibit 6, does everyone have that in front of them? Ten hours
5 on the first day, ten hours on the second, ten hours again on
6 the third, I was off on the fourth. On the fifth, I worked ten
7 hours. On the sixth, I was off. On the seventh, I was off.
8 On the eighth, I believe I was off -- no, the eighth is ten
9 hours. Sorry. And the 9th is also ten hours.

10 I don't know. Did I go over a week? I believe so.
11 We said only a week, yes?

12 Q. Yes. I asked for the first week of September.

13 A. Can you state what the dates would be so that I can give
14 you accurate information? So from the first to the seventh,
15 would that be correct?

16 Q. I am going to get you that information. First week of
17 September, your pay period is from Monday through Saturday, so
18 it would be from August 31st to September 5.

19 A. OK. So I don't have August 31st, since I decided to start
20 it on the first of the month of September, but I do have the
21 first, and that day I worked ten hours. You said to the fifth?

22 Q. Yes. That's a Saturday.

23 A. So ten, ten, that's 20, 30. I was off on the fourth.
24 40 hours.

25 Q. OK.

HBDsMED1

Medina - cross

1 A. Based on my own record.

2 Q. OK. How many hours were you paid?

3 A. At that time, I believe I was paid the 40 hours. I don't
4 see any note saying otherwise, so I would say I was paid 40
5 hours at \$9 an hour.

6 Q. OK. Now, you started to keep a record?

7 A. Yes. As you can tell, this way is much easier to state
8 whether or not you worked or were paid for a particular time
9 period.

10 Q. Perhaps. So there is nothing here in the time system for
11 August 31st. Look at page three of Exhibit 5.

12 A. OK. All right.

13 Q. So the system was still not functioning from time to time,
14 is that correct?

15 A. Based on the information I have in front of me, it looks
16 like it was not working accurately.

17 Q. No, based on your recollection.

18 A. Based on my recollection, do we want to go on fact, or do
19 we want to go on my recollection?

20 Q. We want to go on your recollection.

21 A. Yeah. When we have a document in front of me, shouldn't we
22 go on fact?

23 Q. What was the event that caused you to start logging in your
24 hours in your own book starting September 1st?

25 A. The fact that the system was still not working correctly.

HBDsMED1

Medina - cross

1 Does that answer your question?

2 Q. Yes. The system had not been working -- well, by not
3 working correctly, do you mean that it was not working from
4 time to time, as you stated earlier, or something else?

5 A. That it was not working correctly from time to time. So I
6 was fed up with being told that I had worked less hours than
7 what I had in reality worked.

8 Q. OK. At this point in September, you decided not to leave
9 your position at East Communication, Inc., is that correct?

10 A. That is correct.

11 Q. OK. You were not terminated, is that correct?

12 A. I don't believe so.

13 Q. So you had this log now. For now, the second week of
14 September, do you recall how many hours you worked?

15 A. I don't recall, but I don't feel the need to since I wrote
16 it down. That was the purpose of it.

17 Q. OK. Did you write this down every week or every day? How
18 did you make your logs?

19 A. It was a weekly log.

20 Q. OK. You would make that on Saturday when you got paid?

21 A. Normally, yes. I would sit down and look back on the days
22 that I had worked and jot it down before I spoke with
23 Mr. James.

24 Q. OK. At this point, were you aware of overtime pay?

25 A. I believe, at that time, I may have become aware. That

HBDsMED1

Medina - cross

1 might have been one of the reasons I also started to document
2 the time.

3 Q. But do you recall that?

4 A. Yes.

5 Q. Now, up until September, did you continue to log in and log
6 out on the system every day that you came?

7 A. As I stated before, to my recollection, you didn't have to
8 physically input the log-in information unless someone logged
9 you out and logged in as themselves. And being that, for the
10 most part, I was the only employee, it was just kind of there
11 for me to just click log in, click on out, meaning clock in,
12 clock out.

13 Q. Did you clock in and clock out?

14 A. I attempted to use the system and many times it failed.

15 Q. It failed. How does it fail?

16 A. Well, for example, it would allow me to clock in, but it
17 would not allow me to clock out or vice versa.

18 Q. Did you keep notes of when you clocked in and when you
19 clocked out for these hours?

20 A. I didn't keep specific hours, I just kept total number of
21 hours, as shown in Exhibit 6.

22 Q. OK. So then let's go then to the second week of September.

23 A. OK. That would be from the fifth to -- no, from the sixth,
24 right, to when?

25 Q. The sixth to the twelfth. We will do it from Sunday to

HBDsMED1

Medina - cross

1 Saturday?

2 A. So on the sixth, as I mentioned, that was a Sunday,
3 correct?

4 Q. Yes.

5 A. As I had mentioned before, you will notice that I was off
6 on Sunday, and apparently, according to my record, I was also
7 off for some reason on Monday. But I went back to work on the
8 eighth, and that day I worked ten hours. Then I also worked
9 ten hours on the 9th, and also worked ten hours on the tenth.
10 And you said going to the twelfth, is that correct?

11 Q. Yes, six to 12.

12 A. That's seven days?

13 Q. Yes.

14 A. So ten, ten, ten, ten. I was off on the 11th and the
15 twelfth, I would have worked ten.

16 Q. So how many hours is that, Mr. Medina?

17 A. I would say 10, 20, 30, 40, from what I see here, unless I
18 am calculating incorrectly. One, two, three -- 40 hours.

19 Q. Is that correct?

20 A. Let me double-check. We said starting from the sixth,
21 which I was off that day, yes? Start from the sixth to the
22 12th?

23 Q. Yes.

24 A. Now, does that complete a whole week? Because unless I am
25 mistaken, six to 12 would only be six days, not seven.

HBDsMED1

Medina - cross

1 Q. I made that mistake too. It is actually seven. You have
2 to count the first day as six.

3 A. Thank you.

4 Q. Six, seven, eight, nine, 10, 11, 12.

5 A. OK. So in that case, I was off for one, two, three days
6 and worked four days for 40 hours.

7 Q. OK. How much were you paid?

8 A. A total of 40 hours a week.

9 Q. 40 hours. How much were you paid?

10 A. 40 hours times \$9 an hour.

11 Q. OK. You recall working less for the first week, for the
12 first two weeks of September, than you did for August, is that
13 correct?

14 A. Yes.

15 Q. OK. The weather in September, at least the first two
16 weeks, is about the same as it is in August, is that correct?

17 A. Not necessarily. New York it pretty unpredictable, but
18 yeah, give or take.

19 Q. OK. Now for the third week of September.

20 A. We are going from the 13th to what date?

21 Q. That would be to the 19th.

22 A. So I have here written down that I worked five hours on the
23 13th, ten hours on the 14th, so that is 15 so far. On the 15th
24 I worked ten hours. That's 25. 16, I worked ten hours.

25 That's 35. And what day are we going until?

HBDsMED1

Medina - cross

1 Q. The 16th.

2 A. 16th.

3 THE COURT: The 19th.

4 Q. The 13th to 19th.

5 A. One more time. Could I actually get something to jot down,
6 since these haven't been calculated hours?

7 THE COURT: I can take judicial notice of it. We'll
8 do the math for you.

9 A. Thank you. I'm sorry, I am not trying to --

10 THE COURT: The 14th to the 19th is 51 hours,
11 according to your notes.

12 A. Yes, which would show that that is when I started to work
13 again over the normal 40 hours.

14 Q. The third week of September is --

15 THE COURT: Counselor, just to speed this along, I'll
16 also take judicial notice from September 20 to the 26th,
17 according to the notes in Exhibit 6, it is 55 hours from
18 September 20 to the 26th.

19 MR. CHUN: OK.

20 Q. That's 51 hours for the third week. How many hours were
21 you paid?

22 A. I believe I was --

23 THE COURT: 55 hours for the week of the 20th to the
24 26th.

25 MR. CHUN: On the third, I'm on September 13

HBDsMED1

Medina - cross

1 through 19, 51 hours?

2 THE COURT: Yes, 51.

3 BY MR. CHUN:

4 Q. How many were you paid?

5 A. 40 at \$9 an hour.

6 Q. Do you have proof of this?

7 A. No, I do not.

8 Q. For the fourth week of September, you were working?

9 THE COURT: That was 55 hours for the week of
10 September 20 to the 26th.

11 MR. CHUN: Yes. That's easy to do it that way.

12 Q. For the 55 hours that you worked from September 20 to 26,
13 how many hours were you paid?

14 A. 45 at \$9 an hour.

15 Q. Do you have any proof of that?

16 A. No, but I do recall a conversation -- and the reason why I
17 couldn't remember when he paid -- when he paid me only 40 or
18 45 was because when we would sit down, and I wouldn't say
19 argue, but for this sake have the conversation about how much I
20 was owed, he would state that his record was different from
21 mine and, therefore, he would -- if he agreed that maybe I
22 hadn't worked over the 40 normal hours, he would only provide
23 me with an additional five hours based on the fact that his
24 records did not show me working more than 40 hours.

25 Q. OK. Did you request at any time up to this period through

HBDsMED1

Medina - cross

1 September 26 to be paid daily?

2 A. Daily? No, I don't think I would ask for that.

3 Q. Did you ever ask to be paid twice per week?

4 A. Not to my knowledge. I don't believe so.

5 Q. Now for the week of September 27 to October 3.

6 THE COURT: Again, I'll take judicial notice of the
7 math calculation here. According to Exhibit 6, it would show
8 70 hours.

9 THE WITNESS: How many?

10 THE COURT: 70. Ten hours each day.

11 THE WITNESS: That was what days? I'm sorry.

12 THE COURT: September 27 through October 3. You can
13 ask questions about that, counselor. We are not going to ask
14 the witness to do the math.

15 BY MR. CHUN:

16 Q. So in that entire seven-day period, you worked all ten
17 hours?

18 A. Yes.

19 Q. You worked every day that week?

20 A. Yes, and I can actually give the reason why, if you would
21 like it.

22 Q. No. Including the Sunday is the 26th. You worked ten
23 hours on Sunday, September 27, 2015?

24 A. That is correct.

25 Q. Do you recall what the hours of the store was on that day

HBDsMED1

Medina - cross

1 from September 27, 2015, that Sunday?

2 A. I don't recall the specific hours, but going off of my
3 recollection, as I stated before, if the store opens at 12,
4 that would mean I would probably have to be at the store to
5 open around 11:30, possibly earlier. And if it was a busy day,
6 which by my record, being that I worked ten hours instead of
7 less, means that it was. I probably left around eight or nine
8 instead of six.

9 Q. So then on that particular Sunday, September 27, you recall
10 working ten hours?

11 A. Yes.

12 Q. How many hours were you paid for this period between
13 September 27 to October 3?

14 A. I believe I was only paid 45 hours at \$9 an hour.

15 Q. You base that believe on what, Mr. Medina?

16 A. Again, as I stated previously, when me and Mr. James would
17 sit down to talk about overtime, he would state that, according
18 to my records, I only worked a max of 45 hours, therefore, he
19 would only pay me 45 hours times \$9 an hour.

20 Q. You continued to work through the end of September for
21 East Communication?

22 A. Yes, I did.

23 Q. Is that correct?

24 OK. Now from October 4 to October 10. Do you recall
25 how many hours you worked from October 4 through October 10?

HBDsMED1

Medina - cross

1 A. I don't need to recall. It is written down.

2 Q. How many hours is that, Mr. Medina?

3 THE WITNESS: Judge is going to take judicial notice?

4 THE COURT: Yes, although I didn't do the math yet.

5 Let's see. Counselor, did you do the math? 65.

6 BY MR. CHUN:

7 Q. You worked 65 hours. You worked every day that week?

8 A. Yes.

9 Q. How many hours were you paid?

10 A. 45 times \$9 an hour.

11 Q. What about from October 11 to October 17?

12 THE COURT: Mr. Medina, what does that say for
13 October 11, 2015, how many hours?

14 THE WITNESS: 11?

15 THE COURT: 10, 11, 15.

16 THE WITNESS: I believe that's a three, your Honor.

17 THE COURT: Three. OK. So it's 53 hours from
18 October 11 through the 17th.

19 BY MR. CHUN:

20 Q. Is that correct, Mr. Medina?

21 A. I would say so if that is what the record shows.

22 Q. How many hours were you paid?

23 A. 45 times \$9 an hour.

24 Q. October 18 to the 24th.

25 THE COURT: 61 hours from October 18 through

HBDsMED1

Medina - cross

1 October 24. Question, counselor?

2 MR. CHUN: Yes.

3 Q. On October 18 to the 24th, then you worked 61 hours?

4 A. If that is what the record shows, then yes.

5 Q. You worked every day that week?

6 A. If that is what the record shows, yes.

7 Q. Do you recall working every day that week in October?

8 A. Yes, it's possible. I even have some notes here stating
9 that Mr. Luis worked, so yes, I believe that was a busy time
10 for us.

11 Q. OK. It was a busy time. How many hours were you paid?

12 A. Again, only 45 hours at \$9 an hour.

13 Q. OK. Now October 25 to the 31st.

14 THE COURT: That's 65 hours.

15 Q. That's 65 hours. Do you recall working 65 hours from
16 October 25 to October 31st?

17 A. Yes. In fact, I worked Halloween day, which I believe is a
18 holiday. And isn't that date supposed to be paid at time and a
19 half, correct me if I'm wrong?

20 Q. For which day?

21 A. For Halloween.

22 Q. It's not a federal holiday.

23 A. Oh, OK.

24 Q. How many hours were you paid for that day?

25 A. 45.

HBDsMED1

Medina - cross

1 Q. For that week, 45?

2 A. 45 at \$9 an hour.

3 Q. So is it fair to say, Mr. Medina, that for the month of
4 October, you only had one day off and that was October 12?

5 A. Yes, that is correct. And I can provide you the reason, if
6 you would like.

7 Q. OK. Now, you have here on the third to the last page,
8 paid?

9 A. Yes.

10 Q. A column for paid?

11 A. Yes.

12 Q. What is that @paid 10/3/15 four how long dollars, is that
13 what you were paid?

14 A. On that date, yes.

15 Q. OK.

16 A. So, again, if you'll allow me, I would like to state --

17 Q. Wait a minute.

18 A. -- why.

19 Q. OK. So you were paid \$400 on 10/3?

20 A. Yes.

21 Q. Then what's the next date, 10/14?

22 A. I believe that's a seven, so 17.

23 Q. 10/17 you were paid \$500, is that correct?

24 A. Yes, that is correct.

25 Q. Is that your handwriting on this?

HBDsMED1

Medina - cross

1 A. Yes.

2 Q. Then on the October 19, you were paid \$103 --

3 A. Yes.

4 Q. -- is that correct?

5 On October 30, you were paid \$300?

6 A. Yes.

7 Q. OK. Then September 28, \$315, and it says travel?

8 A. Yes.

9 Q. What's that?

10 A. So, as I previously wanted to state, the reason why I wrote
11 it down in this way -- and I forgot the September date was
12 because ending of September through October, the owners were
13 traveling and not available -- so, therefore, they actually
14 instructed me to pay myself on many occasions from the register
15 because they were not available to come in and pay me.

16 Q. OK. So September 28 is that you paid yourself \$315?

17 A. I believe so, yes.

18 Q. Well, do you recall?

19 A. To the best of my recollection, I believe I did, yes.

20 Q. Do you recall if that was a Saturday?

21 A. I don't recall, but I'm sure we could look at a calendar.

22 Q. Well, how did it happen? They just told you that they were
23 not going to be there to pay you, so you just to take money out
24 of the register, is that what it was?

25 A. I believe at this point, they started to owe me back pay,

HBDsMED1

Medina - cross

1 and I made a call and said, hey, you know, I'm kind of low on
2 cash and you guys haven't paid me properly in a while. So
3 would I be able to take, you know, a certain amount from the
4 register? And 315 was the agreed amount.

5 Q. That's what you took. Now for 10/3, did you take that
6 money out of the register?

7 A. I believe so. Like I said, they were both traveling or
8 in other stores at the time, so the reason why I worked an
9 astounding amount of hours that month was because there was no
10 one available to give me a day off.

11 Q. OK. But you didn't write down travel here on the notation
12 for October 3, is that correct?

13 A. No, because I believe I only wrote it down after the fact.
14 Like I said, you'll notice they are out of order. So basically
15 what I did was, I went through personal text messages or
16 e-mails that we have from time to time and I realized, oh, he
17 traveled on the 28th of September. That is why I made that
18 notation stating that, from that point forward, he was
19 unavailable.

20 Q. All right. So when did you make these notations on the
21 dates that they were written?

22 A. The dates for pay were not written necessarily on the day
23 that I took the amount. They are based on information that I
24 had kept in other places, like notes on a phone, text, e-mails
25 back and forth, things of that nature.

HBDsMED1

Medina - cross

1 Q. When was this notation for payments made?

2 A. When we started to have disagreements for the amount that I
3 felt was owed, when Mr. James Park and Ms. Yo became available
4 to discuss the amounts that I had taken while they were not
5 present and the amounts I felt that I was owed for the time I
6 work.

7 Q. When was that? When did you start to feel that you were
8 not being paid what you were supposed to be paid?

9 A. Actually, once I started working overtime, but --

10 Q. When was that?

11 A. I don't remember exactly, but I believe we looked at the
12 records, and it was like the third or maybe fourth week of
13 September, based on this record.

14 Q. So from that point on, that is when you started to document
15 the payments?

16 A. Yes.

17 Q. When were these entries made into this exhibit?

18 A. I'm sorry?

19 Q. When were these entries regarding payments made into this
20 exhibit?

21 A. Which ones, the ones that state which dates I was paid?

22 Q. Yes, where it says paid.

23 A. Well, I believe the first time I wrote it was on the third
24 of October 2015.

25 Q. OK. Then you go into the next column here, you make a new

HBDsMED1

Medina - cross

1 column on the right on the top, and that is when you start with
2 November?

3 A. Yes.

4 Q. OK. Do you know if you made these notations in the month
5 of November?

6 A. I don't believe so, because at that time, I believe they
7 came back from traveling or whatever they may have been doing
8 after the second of November, so I didn't feel the need to keep
9 track. The only reason that I kept track in October in that
10 form was because no one was present to physically give me the
11 money and I didn't want to be accused of stealing.

12 Q. They came back November 2nd, is that correct?

13 A. Yes, based on my record and my recollection.

14 Q. So then from November 1st to November 7th, that is 45 hours
15 from November 1st to November 7?

16 A. Yes, I believe that's correct.

17 Q. Is that how many hours you worked?

18 A. Yes.

19 Q. OK. How many hours were you paid?

20 A. 45 hours, \$9 an hour.

21 Q. Business was slow then?

22 A. Yeah, it was. It was slow because it was kind of right
23 before the Thanksgiving holiday season and people don't usually
24 shop at that time.

25 Q. How do you know that?

HBDsMED1

Medina - cross

1 A. Well, because I've been in retail after this instance, so
2 based on my experience, just stating.

3 Q. Retail for cell phones?

4 A. Yes.

5 Q. So you work for a cell phone store now?

6 A. No, not currently, but I did after I worked for Mr. Park.

7 Q. OK. We'll get to that. 11/8 through 11/14?

8 THE COURT: That's 35 hours.

9 Q. 35 hours. Do you recall now your hours?

10 A. That's when my hours started to decline.

11 Q. Your hours are going down?

12 A. Yes.

13 Q. How many hours were you paid for that week?

14 A. I believe I actually was not paid in full. I don't know
15 the exact amount.

16 Q. How much were you paid?

17 A. If I told you, I would be lying, because I don't know.

18 Q. OK. Do you have any records?

19 A. No. Do you?

20 Q. So are you saying that -- well, how many hours then were
21 you paid for this week of November 8 to November 14?

22 A. Would you like me to guess? Because otherwise it would be
23 a lie.

24 Q. You said you worked 35 hours. Did you have a discussion
25 that Saturday with Mr. Park?

HBDsMED1

Medina - cross

1 A. Yes.

2 Q. What happened?

3 A. He stated that he did not owe me, so this is when we
4 started having conversations about the money issue during the
5 time that they were away and he proceeded to state that he did
6 not owe me for all those hours that I worked in October that I
7 was, in fact, paid in full from the payments that I took myself
8 under his authorization, and he also started to state that I
9 was not working a total of 35, 40, or whatever amount of hours
10 by my record I was claiming to work.

11 Q. So then what happened at the end of that discussion?

12 A. Well, obviously, as you might be able to tell from my tone
13 of voice, I was not happy about it, but I considered my
14 position at that time and my finances, and I decided to push
15 forward, hoping that we would come to a resolution.

16 Q. On that Saturday?

17 A. Well, on that Saturday, I didn't agree with his statement.
18 And to myself, upon going home I said, you know what, even
19 though he's incorrect, I'm going to continue to work because I
20 need the job.

21 Q. Do you recall if you were paid anything on that Saturday
22 that you met with Mr. Park?

23 A. I do remember getting paid, I just don't remember the exact
24 amount. But as I said, I could take a guess if you would like
25 me to.

HBDsMED1

Medina - cross

1 Q. So you don't remember. Did you deposit any of that money
2 into an account?

3 A. I don't think so, because from my recollection, it was --
4 it was probably half of those 35 hours, if that.

5 Q. Did he offer you any amount of money for that week that you
6 worked?

7 A. He stated that I worked less than 35, then stated a number,
8 which that is what I am stating I don't recall. I don't want
9 to say a number when I don't recall what he said, and then only
10 paid me for the hours he thought that I worked.

11 Q. Then what about from 11/15 to 11/21?

12 THE COURT: That's 44 hours.

13 Q. Is that correct, Mr. Medina, that you worked 44 hours from
14 November 15 to November 21st?

15 A. Yes.

16 Q. Do you recall how much you were paid for that pay period,
17 that week?

18 A. No. If I told you, I would probably be lying.

19 Q. OK. Did you write it down?

20 A. Possibly. I don't see it here.

21 Q. Because you wrote down here on the previous page, page --

22 A. I wrote down 11/2015. Is that what we're speaking of?

23 Q. Yes. Previous page, which is the fifth page of your
24 exhibit, you wrote down 11 to 15. That is \$300?

25 A. Right.

HBDsMED1

Medina - cross

1 Q. Is that what you received?

2 A. That's what I received. Now, what is unclear is was that
3 for back pay or was that for hours worked currently?

4 Q. So wait a minute. Did you receive it on November 2?

5 A. Yes.

6 Q. That was the day that Mr. Park came back from traveling?

7 A. Yes.

8 Q. You met. OK. Then let's see. Then from 11/15 to 11/21,
9 you worked 44 hours. Do you recall how many hours, how much
10 you were paid for that week?

11 A. Well, I wrote down that I was paid \$500 on 11/20, but to my
12 recollection, that wasn't for that workweek, as you stated
13 yourself. The workweek didn't end until the 21st, is that
14 correct?

15 Q. November 21st is a Saturday.

16 A. Right.

17 Q. So you got paid on Friday?

18 A. I got paid on a Friday, but it wasn't an early payment. It
19 wasn't like, oh, I feel nice today, I am going to pay you
20 early. It was because we were having discussions on money that
21 was owed from October, and he agreed to pay me that amount.

22 Q. You received that?

23 A. Yes.

24 Q. Directly from him?

25 A. Yes.

HBDsMED1

Medina - cross

1 Q. You also received on November 10 \$600, which was a Tuesday?

2 A. Yes.

3 Q. Do you recall that?

4 A. Yes. Again, I believe that's all based on funds that were
5 not paid through the month of October.

6 Q. OK. So you received these funds now, November 10 and
7 November 20. Were you, in your mind, paid up through October?

8 A. No. Actually, I felt that I was owed some money.

9 Q. How much was that?

10 A. Well, based on my calculation, about \$1,500. Now, if we're
11 talking specifically about October, probably half of that. But
12 like I said, there was also money missing in the month of
13 November, that you would have the last time that I chose to
14 work for the company.

15 Q. So let's go then to the end. That's the 11/22 to 11/28.

16 THE COURT: That's 57 and a half hours.

17 Mr. Medina, for 11/27/15, does that say 12 and a half
18 hours?

19 THE WITNESS: I'm sorry. Let me check.

20 THE COURT: 11/27.

21 THE WITNESS: Yes. I see that I wrote first ten, and
22 then kind of wrote a two over it because I probably miswrote
23 it.

24 THE COURT: Then that is 57 and a half from
25 November 22 to the 28th.

HBDsMED1

Medina - cross

1 BY MR. CHUN:

2 Q. So you worked 57 and a half hours. November 28, that was a
3 Saturday. That was the Saturday after Thanksgiving?

4 A. Yes.

5 Q. That was your last day?

6 A. That's correct.

7 Q. OK. Were you paid on November 28?

8 A. To my recollection, no. I believe he said because he was
9 also aware that there was a balance owed from October as well
10 as some of November, that we would get together and discuss
11 that at a later date.

12 Q. OK. So how did it come about that November 28, 2015, was
13 your last day working?

14 A. Well, that was the last day I ever worked. I didn't work
15 after that.

16 Q. Did you give a two-week notice?

17 A. No, I did not. I wasn't required to.

18 Q. Did you give a one-week notice?

19 A. I don't believe so. I don't think I was required to.

20 Q. So did you notify anybody on November 28 that this was
21 going to be your last day at work?

22 A. To be honest, I'm not sure, but I believe since he chose
23 not to pay me on that date, that's when I would have informed
24 him and said, you know what, I don't think I'll be working for
25 you any longer.

HBDsMED1

Medina - cross

1 Q. OK. Is that, in fact, what you did?

2 A. Yes, because I didn't work anytime after that.

3 Q. Well, I would like to know a little bit more than I guess.

4 You worked that week, this is the week of Thanksgiving. You
5 worked Saturday, the 28th. You worked ten hours?

6 A. Yes.

7 Q. Do you recall what those hours were, it was from ten to
8 six?

9 A. That was what day? I'm sorry.

10 Q. The last day you worked.

11 A. What day was that?

12 Q. November 28th, 2015. You wrote it down the last day.

13 A. I'm not asking the date, I'm asking --

14 THE COURT: That was a Saturday.

15 A. So Saturdays are very busy days, and we would work from
16 very early until late. So yes, I worked ten hours on that day.

17 Q. OK. Then when did you meet with Mr. Park about payment?

18 A. Sometime during that Saturday before the end of the day.

19 Q. OK. He told you that he wasn't going to pay you for that
20 week?

21 A. Not in those exact words, but he said I'm unable to pay you
22 at this particular time, something to that respect, and as far
23 as money that you're claiming I owe you, we will speak on that
24 at a later time.

25 Q. OK.

HBDsMED1

Medina - cross

1 A. Then I went home, thought about it, and I said, you know
2 what, I don't think I am going to work any longer with these
3 individuals.

4 Q. OK. Did you go out to eat dinner with Mr. Park your last
5 day that you worked, that Saturday, November 28th, 2015?

6 A. I do remember going out to eat with Mr. Park. I don't
7 recall what day it was.

8 Q. Was it before you decided that you were no longer going to
9 work here?

10 A. Yes.

11 Q. Then you just informed Mr. Park by phone call?

12 A. I believe so, yes, or possibly text. Unfortunately, I
13 don't have that text available.

14 Q. OK. On the last day that you worked, did you ask Mr. Park
15 for any documentation like a pay stub?

16 A. No.

17 Q. OK.

18 A. I did not.

19 Q. Did you mention anything about payments from February
20 through August that you believed that you were owed?

21 A. I mentioned that he had been misrepresenting the total
22 number of hours that I had worked, but I don't think I ever
23 specifically stated, you owe me X amount for that time. I only
24 went based off the record that I started to keep in September.

25 Q. All right. So then let's go with November 10, 2015. You

HBDsMED1

Medina - cross

1 received a payment of \$600. Where did you apply that money?

2 A. Again, part of that could have been in my bank account and
3 part of that was probably spent in cash.

4 Q. No, I am talking about you got paid \$600 you said on
5 November 10, but that was not for the week of November 10?

6 A. No.

7 Q. So what was it for?

8 A. It was for the enormous amount of hours that I worked in
9 October.

10 Q. OK. What about for the payment of November 20, 2015?

11 A. Again --

12 Q. That was also for October?

13 A. -- that was also probably for October.

14 Q. Well, when you say it was probably for October, what does
15 that mean?

16 A. Well, I can't say for certain. I am only going based off
17 what was written down and the fact that I know that I wasn't
18 fully paid for the hours worked in October.

19 Q. OK. Then you have here November 2, 2015, payment of \$300?

20 A. Yes.

21 Q. What is this, December 3, 2015, \$1,500?

22 A. Right.

23 Q. What's that?

24 A. So after, if you turn to the back page, you'll see that I
25 have a total amount owed of \$3,115. When we sat down and spoke

HBDsMED1

Medina - cross

1 about that on the third of December, he said based on his
2 records and what I had worked total ever, I guess, or I would
3 say he only owed me 1,500, and he provided that in cash.

4 Q. I notice that you put that down. This is your handwriting
5 for the notation of the \$1,500, is that correct?

6 A. Yes.

7 Q. Did you write down for the notation when you took \$600 --
8 when you were paid \$600 on November 10, did you write down what
9 form it was, 20s, 50s?

10 A. On November 10?

11 Q. Yes.

12 A. I didn't write down what form it was in, no. As far as the
13 denomination, it was in cash, I can tell you.

14 Q. For November 20, did you write down any notation as to what
15 bills it was?

16 A. No, I did not.

17 Q. OK. This payment, December 3, 2015, \$1,500, that was the
18 last payment you received?

19 A. Yes.

20 Q. Is this record based on your records, are you saying that
21 it is \$1,515 total money owed?

22 A. Yes, but I don't think I factored in the fact that there
23 was overtime. I just multiplied at the normal rate.

24 Q. So then what is the overtime rate?

25 A. Well, if it is time and a half, I think you stated

HBDsMED1

Medina - cross

1 previously it would be about 1350.

2 Q. OK. So then how much is it then that is total money that
3 is owed?

4 A. I didn't do the calculation, but I believe my lawyers might
5 have.

6 Q. OK.

7 THE COURT: Do you have anything further on cross?

8 MR. CHUN: I do, just a few more questions.

9 Q. When you were in the store and if it wasn't Mr. Park or
10 Mr. Yo or Ms. Colonie, it was just you?

11 A. That's correct.

12 Q. Did you ever ask for your employer to hire somebody else to
13 work with you?

14 A. Yes, on several occasions, but I was told that the store
15 was not busy enough. And in some respect, that was true,
16 because it went up and down. Some days were very busy and some
17 days were not as busy.

18 Q. Did you ever work in the other location, in the
19 Poughkeepsie location?

20 A. We spoke about it, but I never actually got to go to the
21 location and work or even visit.

22 Q. OK. Or the other one as well that you didn't mention, in
23 Pennsylvania or New Jersey, did you ever work in the New
24 Jersey/Pennsylvania location?

25 A. No, I did not, but I did have communication with the

HBDsMED1

Medina - cross

1 employees that worked there.

2 Q. Did you hire the employees that worked there?

3 A. No, that wasn't my responsibility.

4 Q. OK. Did you, as part of your duties, did you pay
5 Ms. Colonie?

6 A. Never.

7 Q. Did you ever receive any monies directly from Ms. Colonie?

8 A. No, I don't believe so.

9 Q. OK. Did you ever hire or fire anybody while you were
10 working at East Communication, Inc.?

11 A. No, sir, I was not management.

12 Q. You were not management?

13 A. No, not by title or...

14 Q. I want you to take a look at the time sheet.

15 A. Which one?

16 Q. Exhibit 5.

17 A. OK.

18 Q. I want you to go through and tell me which data from time
19 to time didn't work and which one from time to time worked?

20 A. Do you want me to go through all of it?

21 Q. Yes.

22 A. Are you sure?

23 THE COURT: Counselor, this is five pages long. Can
24 you ask a specific question?

25 Q. Yes. He is saying he was asked what are some examples on

HBDsMED1

Medina - cross

1 direct and he pointed to one example of the time being correct
2 and one example of the time being incorrect. I want to know,
3 based on his memory and his log, which he doesn't have anything
4 from February through August, I would like to see where he
5 believes the times that he says did not work, did not work, and
6 the times that he says did not work, worked. All I am seeing
7 is a handwritten log that, as we all know, can be handwritten
8 at any time.

9 THE COURT: Counselor, I believe when Ms. --

10 MR. CHUN: The record is not in evidence.

11 THE COURT: Ms. Isaacson first presented Exhibit 5 to
12 the witness. He said he wasn't familiar with this. He didn't
13 write it.

14 MR. CHUN: OK. Then he looked at it and said yes.

15 THE COURT: We're not just going to have a
16 free-for-all on five pages. Ask some specific questions.

17 MR. CHUN: OK.

18 BY MR. CHUN:

19 Q. Mr. Medina, this log time sheet, the first entry,
20 February 24 at 3:15 in the afternoon --

21 A. OK.

22 Q. -- do you recall if that was the first date that you were
23 employed?

24 A. I don't believe it was the first day I was employed, but it
25 was the day that I was provided with log-ins or the ability to

HBDsMED1

Medina - cross

1 clock in and out.

2 Q. Was Mr. Park with you on that time when you clocked in?

3 A. Yes, I believe she was the one that showed me how to use
4 the system.

5 Q. Was she there with you when you clocked out?

6 A. Yes, I believe so.

7 Q. OK. You'll notice that you clocked out approximately
8 49 hours later?

9 A. Well, that is probably because that day he showed me how to
10 clock in, but possibly did not show me how to clock out or he
11 may have forgotten. It was a long time ago.

12 Q. It was a long time ago?

13 A. Yes.

14 Q. September 2015 was also a long time ago?

15 A. Yes.

16 Q. So do you recall him telling you on February 24 about how
17 to clock out?

18 A. How to clock out?

19 Q. Yes.

20 A. Possibly, but the system might have malfunctioned. As I
21 mentioned, it had a habit to do so.

22 Q. So this is your first day dealing with the system?

23 A. Yes.

24 Q. Are you saying that it malfunctioned?

25 A. Based on my recollection and the fact that the information

HBDsMED1

Medina - cross

1 is inaccurate, obviously I didn't clock out two days later at
2 four something, yes. The system was malfunctioning, and
3 probably why I clocked out at that time, that is when it
4 started to function properly.

5 Q. OK. Was Mr. Park there with you when you attempted to
6 clock out?

7 A. Possibly, yes, because that is during the first week or so
8 of my training. So he was there for most of that time.

9 Q. From February 24, 2015, are you saying that you knew how to
10 clock out?

11 A. Yes. I was shown how to clock in and out, but that doesn't
12 mean that I was able to.

13 Q. When you were not able to, you discovered that you were not
14 able to, was Mr. Park right there with you?

15 A. Yes.

16 Q. What happened?

17 A. He said, oh, the system is acting up. We'll get it
18 corrected. I'll fix it.

19 Q. OK. So then on February 26 is the next log-in?

20 A. OK.

21 Q. Which is the same time as the log-out.

22 A. OK.

23 Q. Did you, in fact, log in at 4:03 on February 26?

24 A. Yes, because what was done was, I was instructed to clock
25 out and clock back in at that time in an effort to fix the

HBDsMED1

Medina - cross

1 error.

2 Q. All right. Then did you clock out at 11:58:55 p.m. on the
3 same day?

4 A. I did not. That seems to be an automatic clock-out time
5 before midnight because the system was still malfunctioning.

6 Q. OK. So when you did clock out on February 26, do you
7 recall clocking out on February 26?

8 A. Yes. I clicked clock-out and it clocked me out, and then
9 I clocked back in a few seconds after, as the records shows.

10 Q. No. I'm talking about when you clocked the out on the
11 26th. Now it says 11:58:55. Do you recall clocking out on
12 February 26?

13 A. I recall attempting to clock out, but it malfunctioning.

14 Q. What time was that that you attempted to clock out?

15 A. Probably around closing time, 8:00.

16 Q. Was Mr. Park there?

17 A. He may have been.

18 Q. Do you recall on that date if anybody was there besides
19 you?

20 A. I don't believe I was alone. Can I say, in fact, who was
21 there? No, because it wasn't always Mr. Park. Sometimes it
22 was Mr. Luis Yo. It could have been Luis or it could have been
23 Mr. Park.

24 Q. This is around your first week of working. You don't
25 recall on the 26th, when you tried to clock out at night, who

HBDsMED1

Medina - cross

1 was there with you, if anybody?

2 A. I know I was not alone. As I said, during the first few
3 weeks, I did not have the codes or keys to lock the store or
4 open it.

5 Q. OK.

6 A. Therefore, there is no way for me to have been alone. Can
7 I state for a fact if it was Mr. James Park or Luis? No, I
8 cannot.

9 Q. OK. What about Ms. Colonie, was she there?

10 A. I don't believe so.

11 Q. So it could have been Mr. Yo or Mr. Park or one of those
12 two was there?

13 A. Yes, to my knowledge.

14 Q. To the best of your knowledge. All right. Then February
15 27, you clocked in, it says here, at 1:01 p.m., is that
16 correct?

17 A. Yes. I believe --

18 Q. Did you actually clock in at 1:01 p.m., or did it
19 malfunction and then clock in automatically?

20 A. No. I believe we were still trying to fix the issue so,
21 therefore, I received a call probably from Mr. Park stating
22 that possibly it had been fixed and that I should attempt to
23 clock in. And as you can see, it allowed me to clock in, but,
24 once again, did not allow me to clock out.

25 Q. It didn't allow to you clock out. Did you work from

HBDsMED1

Medina - cross

1 February 27 to March 6?

2 A. I believe so, yes. I might have had a few days off because
3 at that time, I was not working every day because I was new,
4 but I did work during that time period, yes.

5 Q. But the clock-in function, was that working?

6 A. The clock-in function for some reason worked. It was
7 mostly the clock out, but it also did malfunction to clock in
8 from time to time.

9 Q. So from the period of February 27 to March 6 is seven days?

10 A. Yes.

11 Q. Did you work during any of those seven days?

12 A. I did, but as I stated, if you don't clock out, you can't
13 clock in. So since the system did not allow me to clock out,
14 there was no way for me to clock in on the days that I worked
15 during that time.

16 Q. Your last clock in date was 11/28/2015 at 11:02, is that
17 correct?

18 A. I don't believe that was correct. I do know that was the
19 last day that I worked, but as my personal record shows, I was
20 there until probably eight because I worked a full ten hours.

21 Q. OK. So are you saying that, then, fine, this is the second
22 to last day, November 27. You clocked in at 8:07, that works,
23 that was correct?

24 A. So I don't think I would have been at the store that early.
25 Again, I feel that that is a system error, because although I

HBDsMED1

Medina - cross

1 did get to the store quite early sometimes, I did live far. I
2 don't believe I got to the store at eight in the morning. That
3 seems out of place.

4 Q. OK. Did you clock out at 11/28/2015 at 11 o'clock in the
5 morning?

6 A. Possibly in an attempt to clock out in order for me to be
7 able to clock back in.

8 Q. OK. You have to clock out in order to clock back in?

9 A. Yes.

10 Q. So then the previous entry is you clocked out at 11/25 at
11 11:59 p.m.

12 A. So do you really think that I was in the store at
13 11:59 p.m.?

14 Q. I'm trying to understand a better sense of your clocking
15 in.

16 A. It doesn't allow me to clock in unless I clock out.

17 Q. So when did you clock out?

18 A. Well, by your own knowledge, you'll see that the system
19 clocked me out automatically on that particular instance at
20 11:59 p.m.

21 Q. OK.

22 A. There is no way I was in the store at that time.

23 Q. You can see that information from when you clocked out and
24 when you clocked in?

25 A. It will show you, yes. When you walk in, it will say

HBDsMED1

Medina - redirect

1 clocked out at that time, and then I would just be, like, what
2 the heck, I was not here. And I just assumed, oh, it was
3 probably an automatic thing trying to repair itself, and then I
4 would proceed to try to clock in. Sometimes it wouldn't let
5 me. Just sometimes it would not let me clock out, it would not
6 let you clock out.

7 Q. That's when you said it was a malfunction?

8 A. Exactly.

9 Q. OK.

10 MR. CHUN: I have nothing further.

11 THE COURT: OK. Ms. Isaacson, how much time would you
12 need on redirect?

13 MS. ISAACSON: Maybe five.

14 THE COURT: Approximately how many minutes?

15 MS. ISAACSON: Probably five minutes.

16 THE COURT: We can finish up with this witness.

17 REDIRECT EXAMINATION

18 BY MS. ISAACSON:

19 Q. Mr. Medina, you testified that the store was open from ten
20 to eight, except on Sundays, correct?

21 A. Yes, that's correct.

22 Q. So when you record in your notes in Plaintiff's Exhibit 6
23 that you were working ten hours, does that include the time
24 that you spent opening and closing the store each day?

25 A. No, it does not.

HBDsMED1

Medina - redirect

1 Q. Approximately how many hours did you spend each day opening
2 and closing the store?

3 A. I would say it took, on a slower day, about 20 to
4 30 minutes to close, and on a busier day, because there was
5 more to clean or more money to count, it possibly could have
6 took up to 45 minutes to an hour.

7 Q. Is that for both opening and closing?

8 A. Well, mostly for closing. Opening is a little bit shorter
9 most of the time.

10 Q. OK. So would it be correct to say that when you recorded
11 you worked ten hours, it was more like 11 hours including
12 closing and opening?

13 MR. CHUN: Objection.

14 A. Yes.

15 MS. ISAACSON: No further questions.

16 THE COURT: OK. Thank you, Mr. Medina. You may step
17 down.

18 (Witness excused)

19 THE COURT: I suggest that we can take a lunch break
20 now briefly before we call the next witness. Do you have any
21 other witnesses that you are going to call?

22 MS. ISAACSON: No, your Honor.

23 THE COURT: OK. You rest at this time?

24 MS. ISAACSON: Yes.

25 THE COURT: We'll take a brief lunch break, and we'll

HBDsMED1

Medina - redirect

1 start the defense case when we come back. Let's say 1:30.

2 (Luncheon recess)

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HBDTMED2

Park - direct

AFTERNOON SESSION

(1:30 p.m.)

DEPUTY CLERK: This court is now back in session.

THE COURT: Are we ready to start the defense case at
this point?

MR. CHUN: Yes.

THE COURT: Okay. Then how many witnesses are you
going to be calling?

MR. CHUN: One.

THE COURT: Okay. Please go ahead.

MR. CHUN: Defendants call Mr. James Park.

JAMES PARK,

called as a witness by the Defendants,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CHUN:

THE COURT: Welcome, Mr. Park.

THE WITNESS: Thank you.

THE COURT: Please speak clearly into the microphone
so everyone can hear you. Thank you.

BY MR. CHUN:

Q. Mr. Park, good afternoon.

What is your relationship with East Communication
Inc.?

A. I started first by helping out a friend, a family friend,

HBDTMED2

Park - direct

1 he is -- Mr. Yo, he's a musician, so he opened a store but he
2 wasn't physically there to oversee the daily operations, so I
3 had some time with me at that time, so I asked to help out.

4 Q. And did there come a time when you met with Mr. Medina?

5 A. Yes. So right after the construction was done, I was
6 learning all the rules, the corporate rules, and we were
7 required to have a minimum of two people on staff plus the
8 owner.

9 So I was in the -- I was looking for somebody, and the
10 next door business the CNC Market Research. The management,
11 the manager, she came up to me and she asked me what I thought
12 about hiring Mr. Medina. And she explained the full situation.
13 She said the job description, they have to go outside to grab
14 people to come in, there's a lot of snow on the ground and
15 because of his limited physical abilities he wasn't able to
16 perform his job at the market research place, so asked me, you
17 know, why not hire him. And I spoke to him, his legs were weak
18 but he's a smart guy, you could tell, so I said why not, I will
19 give him a part-time position. That's how it started.

20 Q. When was this?

21 A. I believe February. I believe February.

22 Q. And when you first met Mr. Medina, where did meet him?

23 A. Well, so I asked the -- at that time the neighbor, the
24 manager, may we speak to the guy. So I literally had a
25 conversation with him outside the store, right in front of the

HBDTMED2

Park - direct

1 store. And I just happened to be there, I spoke to him. I
2 asked him why -- I had my doubts, why she wants to get rid of
3 him, but after speaking to him for about 15, 20 minutes, I said
4 why not, let's give him a shot.

5 Q. Was there discussions at that time about number of hours
6 worked and hourly pay?

7 A. Yes.

8 Q. What was that?

9 A. I knew because I could tell that he had physical
10 disability, so I thought I can't give him a lot of hours. So I
11 was going to give him -- to fill up his hours that I wasn't
12 going to be there. That's how it started. I said I will train
13 you, and I will give you the -- I will train you first, let's
14 see how that goes.

15 Yeah, that's how it started. Then I told him that I
16 cannot give you a lot of hours, but you are going to get more
17 hours than at market research, but I cannot give you a lot of
18 hours, but is that okay? I kind of liked him at that point
19 because I told him my job doesn't require you to walk around
20 and grab people in the cold, you stay back there and speak and
21 smile at the customers, you're bi-lingual, so that's what I
22 needed at the time.

23 Q. And what was then the agreement, if any, regarding hourly
24 pay?

25 A. The hourly pay was just like \$9 an hour, that's it.

HBDTMED2

Park - direct

1 Q. What was the agreement, if any, regarding the form of
2 payments?

3 A. Talking about overtime?

4 Q. No, talking about how was the money -- in what form was he
5 paid?

6 A. This was a tricky situation. He told me this whole story.
7 He said I came here illegally because of my physical situation
8 then I lived here illegally at a certain point, then --

9 MR. ANDROPHY: Objection.

10 THE COURT: Then I got my green card through marriage.
11 I'm in the process of getting my citizenship. So could you
12 just pay me cash? That's what he asked me. Because market
13 research paid slightly above the \$9, right, but after taxes it
14 would equivalent less than \$9, so he asked me \$9 in cash.
15 That's the price we agreed on.

16 MR. ANDROPHY: Your Honor, we move to strike any
17 testimony about Mr. Medina coming here, supposedly saying he
18 came here illegally.

19 THE COURT: Overruled, but I'll take it under
20 advisement.

21 Q. Was that discussion during first meeting that you had with
22 him?

23 A. Yes, I told him with anybody who bring in -- I told him,
24 you be honest with me, I will reciprocate that back. Tell me
25 everything up front, then we could work things out. And

HBDTMED2

Park - direct

1 because they were cutting his hours more and more and more from
2 the job that he was -- he held at that time, he wanted to start
3 immediately as soon as possible.

4 Then I had a child on the way, I needed -- I said why
5 not, I could be home a little more. So that's how it started.

6 Q. And after that meeting that you had with him in front of
7 the store, do you recall about how much time later was that
8 Mr. Medina started to work?

9 A. I believe I spoke with Luis, the guy who started the store,
10 and I told him, you know, he is on crutches, but he's a very
11 smart guy, and that's -- he's bi-lingual, we could use that, we
12 could use his help. I think after a week later, maybe, at the
13 latest, I gave him a call and I said could you start whenever,
14 then he agreed, and that was it, you know.

15 Q. Then take us through the beginning stages of when he
16 started to work.

17 A. So usually when they come in I give them a brief
18 description of -- job description, just tell them what is what
19 is expected of an employee, customer service, the actual stock
20 in the back, the actual sales, it's better sometimes better to
21 lose a sale but you have to be courteous to customer service
22 because there's a lot of competition in that area, and one of
23 the biggest complaints with the other competitors of Metro PCS
24 is that their employees are rude. So our business model was
25 let's be respectful to the customers, let's be honest about our

HBDTMED2

Park - direct

1 product, our merchandise.

2 And Mr. Medina, he is an eloquent speaker, he's also
3 bi-lingual, customers liked him, and they also recognized him
4 because for many years, I don't know for how long, but he
5 actually worked right next door. So most people, because
6 Parkchester is like a closed area, there's a lot of buildings,
7 and most of the customers, they knew Ely because there's not
8 that many -- they recognized him and they liked the fact that
9 he was at the store and he was actually bringing people in, so
10 I liked that.

11 Q. Was he responsible for opening the store?

12 A. Sure. We discussed this, and I told him hey -- I was kind
13 of -- at the beginning I didn't want to keep saying that hey,
14 you're disabled, I didn't want to put it out that way, I said
15 can you do this, that's the first thing I asked. And at that
16 time he left lived in Westchester somewhere, so we discussed
17 it: Is it better for you to open the store and leave in the
18 middle of the day so you could get home earlier, or is it
19 better you come in the middle of the day and close? And he
20 said well, it doesn't matter, as long as he had a job and the
21 hours, that's all he cared about.

22 Q. So what was he assigned do?

23 A. So after a few weeks of training, I gave him -- there's
24 only like three copies of the key, so I gave him one of them,
25 and he was asked to open the gate, there's two gates, one that

HBDTMED2

Park - direct

1 covers about 75 percent of the face of the store, another gate
2 covers about 25, the main gate never worked, it still doesn't
3 work today, so he was just asked to -- if you unlock it, if you
4 move your hand up, the gate just rolls right up.

5 Q. Is that the main gate?

6 A. That's the small gate to get into the door. You walk in,
7 as soon as you walk in the alarm will start beeping because
8 there's a keypad on the left side of the wall, you punch in the
9 code, then there's about another ten feet to the counter, maybe
10 13 feet if you go around the counter, and that's how you start
11 the day.

12 Q. And did there come a time when Mr. Medina learned about
13 clocking in for work?

14 A. That's one of the first things we teach an employee,
15 because every time you make a sale you have to use a system
16 called Wireless Standard, then we provide the employee with an
17 ID and a password. They use that. Every time they make a
18 sale, it show up on the system. They will scan, for example,
19 they -- a customer bought a phone and I put -- the phone comes
20 with their own what we call an IMI number, your scan the IMI
21 number and the price would come out and how much he got, he
22 received from the customer.

23 You can only do the transaction if you only have to
24 physically log in. We always tell them, a lot of times
25 companies that have something that people call ASRs, they're

HBDTMED2

Park - direct

1 mystery shoppers, they come into the store unannounced and they
2 say customer complaint that you were not open on time. So our
3 proof that you were open on time is using the wireless, as soon
4 as you walk in after you punch in the alarm code. The first
5 thing you're instructed to do is sign into Wireless Standard,
6 that is you punch in the time you walked in.

7 Q. I see. You referred to ASR, what is that?

8 A. Account sales, they work for the actual Metro PCS
9 corporation, they send the workers, they do weekly visits,
10 sometimes unannounced visits.

11 Q. So is the clock-in the same, the Wireless Standard, as it
12 is that you have to input for a sale?

13 A. Yes. It's the same program. So there's two different
14 programs, one program is actually run by the company Metro PCS,
15 another program is contracted by -- a third party company
16 contracted by Metro PCS to run the time management. That's how
17 you match the register at the end of the night.

18 Q. And was Mr. Medina given a password and --

19 A. Yes, every Metro PCS employee in the whole country is given
20 one.

21 Q. Is that password known only to him?

22 A. Yes.

23 Q. Does it change?

24 A. Yes.

25 Q. Did he in fact change it?

HBDTMED2

Park - direct

1 A. I don't know. I was giving the initial log-in ID and the
2 password, and so that's how I know. When we know we know if he
3 punched in, for example, 10:03, I could assume that he was at
4 least ten minutes before opening the gate, punching the alarm
5 clock, by the time he walked to the computer, he would have
6 punch in. That's how I know. And there are times when a
7 customer would complain about a store, sometimes -- a lot of
8 times about the wrong store, and I would get a call, and I
9 would show them the log-in, the time punched in, and say hey,
10 he was there on time or whoever was on time.

11 Q. I see. And with respect to the training for Mr. Medina,
12 about how long did that last?

13 A. Usually, we train about -- we start about 20 hours a week,
14 about five hours at a time. Because the store is not busy from
15 open to 8. It doesn't work that way. On a busy day a combined
16 hour, you work about three hours. For about seven hours you
17 just sit there and watch videos all day. That's what people
18 do, most of the employees, that's what they do. So we pick a
19 time of the day, we say it's going to get busy from let's say 3
20 to 8 or 2 to 7, and we ask the trainees to come in at that time
21 until we feel comfortable they're ready to run the store on
22 their own.

23 Q. And when Mr. Medina was being trained, who was the one who
24 was training him?

25 A. I did.

HBDTMD2

Park - direct

1 Q. And did there come a time when Mr. Medina was qualified, in
2 your opinion, to work at this place and get more hours?

3 A. Sure. He was -- I was satisfied after the training that he
4 knew his stuff, he knew how to talk to customers, he was able
5 to finalize the sale, he seemed very trustworthy. One of the
6 hardest things is find is not -- after the bi-lingual, but
7 trustworthy factor. So he was trustworthy. He was always
8 there on time. I had my doubts in the beginning, but he proved
9 me wrong every single time. He was right on time. And I said
10 I think I could have him work all day and if he wanted to.

11 Q. And do you recall when that was when he began to work all
12 day?

13 A. To be honest with you, I don't know the exact date, but
14 knowing how I work, maybe after the second week, no later than
15 the third week he would have start working on his own.

16 Q. And what does that mean when he's working on his own?

17 A. So I will tell him you work let's say Monday and Tuesday,
18 can you do open to close. At that time it agreed upon, because
19 the corporate side wants a manager type or the actual operating
20 owners to be there constantly. I'm always in and out. I'm
21 always in and out. And I expect him to be there at 10 o'clock,
22 and he was always there, then I would show up say at midday,
23 bring some -- replenish the store with more phones and
24 accessories, and that's how it was.

25 Q. When he was able to work on his own, what was his work

HBDTMED2

Park - direct

1 hours?

2 A. Well, we usually give the employees an option, do you want
3 to work small hours more days, or do you want to work full
4 days, less days. Mr. Medina's choice was full days, less days.

5 Q. And what's a full day?

6 A. Eight to ten, sorry, ten to eight.

7 Q. So then in the beginning, when he was able to be on his
8 own, what were the days Mr. Medina worked?

9 A. Usually -- at that time my wife was about eight months
10 pregnant, so I remember I wanted the Monday off, the Monday off
11 and Saturday off. So I would ask that he would open and close
12 on Mondays, and I would give him the option, do you want every
13 other day? That's the thing that kills me about this because I
14 would never give straight days like that. It's mentally
15 draining to work as a sales rep at Metro PCS, so our list is
16 alternate days Monday and Wednesday or Tuesday and Thursday, or
17 at most Monday, Wednesday, Friday or Tuesday, Thursday,
18 Saturday. Sometimes when I expect a busy day to fall on a
19 Friday or Saturday, I have them work Monday, Wednesday and
20 Friday so I could use the extra help on Friday and Saturday.
21 So if he was working Tuesday and Thursday, he worked Saturday
22 and stuff like that.

23 Q. Do you recall in the beginning what Mr. Medina's -- how
24 many days per week that he worked?

25 A. He did not work more than three days full. That's a fact.

HBDTMED2

Park - direct

1 Q. So that's --

2 A. I'm not here saying my recollection, my recollection none
3 of that, he worked three days full time hours. The most he
4 ever did was three days and a Sunday, which is six hours. It
5 was -- sorry, yes, six hours, 11 to 5. It's not 12 to 6 it was
6 11 to 5.

7 Q. So let's take it from the beginning when he started to work
8 and he was -- you saw he was able to do this on his own.

9 A. Yes.

10 Q. He worked three to four days per week?

11 A. Yes.

12 Q. Is that your testimony?

13 A. Right. So if it's full days more than that, that extra day
14 would be on a Sunday. Sunday, which is we'll call -- I could
15 say half a day, because it's only six hours, because we open
16 late and close early.

17 Q. Okay. Mr. Medina was okay with this?

18 A. Yes.

19 Q. Now what was the frequency of the payments that were made
20 to Mr. Medina?

21 A. So he asked to be paid in cash, he asked that himself, and
22 I'm on the record, so I was -- I didn't know better. I should
23 have kept -- I should have given him a check regardless. It
24 was an easy matter of me writing it out and just submitting the
25 check or ask to have a check written, but I thought I was

HBDTMED2

Park - direct

1 helping the guy. And I didn't know, and because he seemed to
2 be responsible and a good salesperson, I thought I could just
3 do this as a favor.

4 There was one time where I remember the time when -- I
5 even told the plaintiff, too, there was a time in my life and
6 my family life where we had green card issues, so I remember
7 that when he told me about that, so I felt sympathetic about
8 it.

9 So I -- you tell me, and I already know what days he
10 worked, because it would either be him or myself or Mr. Luis.
11 So I know the days I worked, I know the days Luis worked, the
12 rest -- the rest of the days are the days Ely worked. There
13 shouldn't be any questions what days or when he worked.

14 Q. If he wanted to work more hours, what's the procedure for
15 him --

16 A. I would give him my days, but I would still be there and
17 show up to work late. That's how it worked. But that only
18 happened three or four times, only three or four days, that's
19 considered busy days after he started, which was the 4th of
20 July weekend and the week before the Labor Day weekend, that's
21 what we call our back to school special.

22 As Mr. Medina stated, the summer is the slowest time
23 of the year. There's no reason for us to have employees
24 working a lot of hours. And from a business standpoint, all
25 the expenses are there while the income is not there. This is

HBDTMD2

Park - direct

1 verifiable. Metro PCS, they post their profit every month.

2 It's a simple fact, the cell phone business only does well in
3 September, in December, and about March. We call that the tax
4 season.

5 Q. Okay. So the first time you paid Mr. Medina, tell us what
6 happened.

7 A. Because of all that's happened, I can't recollect, but I
8 know I told him I would pay you for training. He actually
9 demanded that. He was actually negotiating with me. Usually I
10 tell -- I say can I try you for a day or two, because if this
11 isn't going to work out, I don't want to spend all this money
12 on you to train you, because I have to send you to training, I
13 have to pay for training. But I told him, you know what, let
14 me train you myself first, afterwards, but I'm -- I still want
15 to pay you for training, and if it doesn't work out, you just
16 made your money and that's it.

17 And you have to understand my mentality at the time.
18 I needed the help, yes. He was very smart, yes. But I was
19 taking a big risk, because with the mobility issues and stuff
20 like that, I wasn't sure if he could do it. Because the chair
21 is uncomfortable. A lot of times I told people that all the
22 time, if you walk into a cell phone store, you don't see any
23 other sales representatives, they're not sitting down, they're
24 standing all day, eight or ten hour shifts. I have my chairs
25 behind the counter, you could sit here, as long as you put on a

HBDTMED2

Park - direct

1 big smile when customers come in, that should be okay, they
2 won't know that your legs are hurting.

3 So I'm going off track.

4 Q. So the first time you paid him, was that for the training?

5 A. For the training, yes.

6 Q. What was the arrangement in terms of payment period?

7 A. The first six to eight weeks I was there all the time when
8 it was time to get paid. Very simple. I show up, and the last
9 day -- the way he wrote it is incorrect. If he works on a
10 Tuesday and Thursday, he doesn't work until the following week,
11 I will either be there on Thursday, and say hey, you worked
12 let's say three days, here's the money. That's how it would
13 work. The last day you worked, that day, that's the day you
14 would get paid. When I saw those numbers on the dates, I don't
15 know where he came up with those numbers.

16 Q. Okay. Let's just take this back from the beginning. The
17 first time you paid him, what was the arrangement in terms of
18 when he was going to be paid?

19 A. You are going to get paid at the end of the week, end of
20 the week, whenever the end of the week was.

21 But now I remember, so the first few months, because
22 he started -- because he started a relationship with the market
23 research, he was still working for them part time, I think this
24 could be verified, and he was going back and forth. So he was
25 still in the neighborhood even though he wasn't working at the

HBDTMED2

Park - direct

1 store. So my last day, instead of getting paid every Saturday,
2 he could have been paid one day earlier or sometimes two days
3 earlier, as long as he wasn't working Friday or Saturday.

4 Is that clear?

5 Q. So then every week, what is the week -- the days of the
6 week that comprise the week period?

7 A. First to 7th, 8th to 15th, 16th to 23rd, 24th to 31st.
8 That's how we divided it.

9 Q. Thank you. Now when you talk about full shift being ten
10 hours, is there a break period or a lunch period?

11 A. So I tell them if you ever need -- if you have to eat, put
12 up a sign that I'll be back, lock the door, go get something to
13 eat, come back, or sometimes bring it back into the store.
14 That was the policy.

15 Q. And was that period of time included in the ten hours of
16 pay?

17 A. Yeah, I just -- there's no point of deducting, because
18 sometimes like Mr. Medina, said he has to stay 10, 15 minutes
19 later, for me to give the 15 minutes past ten hours or for me
20 to deduct the 30 minutes or whatever minutes that he wanted a
21 lunch break, just it was too much to calculate. So ten hours,
22 you are expected to open at 10 and you are expected to close at
23 8.

24 Q. Okay. What do you mean by close at 8?

25 A. So I do tell my employees always lock the door around 7:30,

HBDTMED2

Park - direct

1 latest 7:45, because you have to count the money, put the money
2 aside, and stuff like that. But if somebody walks in at 7:35,
3 don't just lock the door on them because a lot of time the
4 employees lock the door and people are banging outside and
5 clearly see someone inside, that gets them frustrated, and that
6 anger carries over to the next day.

7 So I just tell my employees if it's something minor,
8 take care of it. Because there's only two types of
9 customers -- actually no, that's incorrect, three types of
10 customers, one about 90 percent of the foot traffic that walks
11 into the store, they're what we call bill payment, they come in
12 to tell us their phone number, the system will show them how
13 much they owe, they pay and walk out. One minute maximum.
14 That's the 90 percent of the store traffic.

15 The other ten percent are the people actually buying
16 phones. That takes about 30 to 45 minutes at tops, from point
17 they walk in and you actually try to make the sale and the
18 activation takes 30 to 45 minutes. And if they -- if a
19 customer wants to buy a phone at 7:45, you know for sure you
20 could close a deal, tell them you know what, stay. If you are
21 past 8, then that day you worked eleven hours. And that was
22 agreed upon, and then I will compensate them eleven hours.
23 That was agreed upon.

24 Q. Okay. Now for the beginning part when he was in training,
25 before he was able to be on his own, did you pay the full

HBDTMED2

Park - direct

1 amount for the times that he was there?

2 A. Of course. I told him a lot of owners, they don't pay full
3 amounts when people are being trained because they don't know
4 how it's going to go, they pay less than the actual minimal
5 amount, I told him. And it was a tricky situation, because he
6 was referred to me by my next door neighbor, right, which at
7 that time I didn't know they were going to move somewhere else.
8 As far as I was concerned, they wanted to be there as long as I
9 was going to be there, and I have to see them every single day,
10 right? And didn't want to mistreat the guy, it makes no sense,
11 right? So I said I will pay you those same wages like you're
12 an actual employee from the moment of training.

13 Q. Okay. And he in fact was paid, and you were the one that
14 gave him the money.

15 A. Yes.

16 Q. Did he say anything in response when he received the money
17 during the training period?

18 A. To be honest, until I got served with the papers, I had no
19 idea this was going to happen. He never actually talked about
20 hey, you know, there's a discrepancy of hours.

21 Now he says he quit. I don't know where he's getting
22 that. I don't understand how --

23 Q. And we're going get there soon.

24 Now when he started and he was able to come on his
25 own, what was -- he was paid how frequently?

HBDTMD2

Park - direct

1 A. Every week.

2 Q. Every week. Was there a specific day of the week that he
3 was paid?

4 A. Right. So if he would -- let's say his last day that week
5 was a Saturday, if I was there, I will pay him myself. If,
6 let's say, his last day was a Friday and I wasn't there,
7 there's no point of him to come all the way back there for his
8 paycheck on Saturday, so I tell him take the money, you worked
9 X amount of amount of hours, take the money, and that's it.

10 Q. So at the time when you paid him, was there -- what type of
11 discussion was there on the dates that you physically paid him
12 the money?

13 A. There weren't that much discussion in detail. Can I get
14 paid now because I'm not working tomorrow? Sure. Because his
15 hours are pretty much set, except some occasions. For example,
16 my kid was sick so I -- so his hours would be set between 30 to
17 35 hours, some hours can you cover for me a little more, maybe
18 40 hours? Except those -- some days was busy. There was -- I
19 remember when he was -- Mr. Medina was testifying he logged in
20 at 8 o'clock. He worked that day. I know because that was
21 black Friday, I believe, if I'm not mistaken. So he did walk
22 in, he punched in, and was working correctly.

23 Q. So when it came to the points on the dates that you
24 physically gave him the money, what was the sum and substance
25 of the conversation?

HBDTMED2

Park - direct

1 A. Thank you very much, you did a great job. Thank you.

2 Q. How did you know how much to pay him?

3 A. Because X amount of hours he worked. He worked three days,
4 three days times nine, \$270, that's it.

5 Q. What about on the days that he worked more than three days,
6 did he tell you that?

7 A. Of course he did. I know that -- how many days he worked.
8 Some days he worked 40 hours. He would never go past 40 hours.

9 Q. Why is that?

10 A. Because I'm not stupid. I grew up here, I know the basic
11 rules, overtime rules. Anybody knows that. If you go past 40
12 hours, you have to give him time and a half, I know that.

13 Q. Was there any policies for the store regarding overtime and
14 authorization for overtime?

15 A. Any policy about overtime, or --

16 Q. Strike that. So then what policy is there, if any,
17 regarding overtime work?

18 A. There wasn't overtime. Of course I pay them time and a
19 half, sure, but we wouldn't constantly be that way.

20 Q. Was it required for authorization to work overtime?

21 A. Yes, I have to tell you and I will know in advance for that
22 particular week if you are going over 40 hours.

23 Q. So did Mr. Medina, at any of the time during the
24 approximately nine months that he was working, request
25 overtime?

HBDTMED2

Park - direct

1 A. No.

2 Q. During any of the nine months did you request Mr. Medina to
3 work more than 40 hours?

4 A. So I'm under oath now, so maybe once or twice, that
5 particular -- when I say once or twice, maybe one week we went
6 by a few hours, there was -- there seems to be a question about
7 was it 55 and 50 hours, it would never be that much. If there
8 was any question it would be 38 or 43, tops. That's what it
9 would be.

10 I'm sorry, 46. So four full days and one Sunday, that
11 would be actual overtime, yes.

12 Q. And for that time period, if he did work for that, do you
13 recall how much he was paid?

14 A. Yes, multiply that by nine, and the actual six hours
15 overtime I would put it -- I think it was like \$13 or \$14,
16 that's how I gave it to him, yes.

17 Q. Do you recall approximately how many times during the time
18 that Mr. Medina was employed that you paid him personally?

19 A. Maybe about quarter of the times the entire time he
20 actually got paid and took money home, maybe a quarter of the
21 times I was actually there and handed the money myself.

22 Q. Now for the remaining times, for the payments, how was he
23 paid?

24 A. Hey, James, can I get paid? Yes, you can. That's it,
25 after a certain period of time. Because maybe the first few

HBDTMED2

Park - direct

1 times, the first maybe the first five, six times he got paid I
2 was actually there, because he was just -- there was a trust
3 factor involved here. After a while I trusted him, I became
4 friends with him. I know how many hours he worked. That's not
5 a dispute, right? Then hey, can I get paid now because I'm not
6 working tomorrow? Sure, take the money. Because the following
7 day when I pick up the money I will notice the amount is short,
8 that's why I automatically assume Ely got paid.

9 Q. So that conversation was started via the telephone?

10 A. Yes. There was no text involved, no, I would -- I had the
11 same phone for the past two years, I would have kept that
12 record.

13 Q. During the times that you did not personally pay him, did
14 he -- did Mr. Medina actually take the money that he said he
15 needed?

16 A. That he needed?

17 Q. Yes.

18 A. Well, so what we call our own protocol would be let's say
19 he will call me and either I don't pick up the phone or I'm not
20 available, he has two other phone numbers he could call, that
21 would be Luis or Colonie. Colonie is my other employee that
22 works at a different location, and I have been with her over
23 the years, too, so there's a trust factor involved with her as
24 well. So that's how Mr. Medina would get paid.

25 Q. Now you heard testimony earlier about Mr. Medina that

HBDTMD2

Park - direct

1 starting the second week of April he said he worked 45 hours.

2 Do you recall if during the second week of April Mr. Medina in
3 fact worked 45 hours?

4 A. No, Monday, Wednesday and Friday, or the Tuesday, Thursday
5 Sunday, or a Tuesday, Thursday and Saturday. Any other
6 alternate days I would be there.

7 You have to understand, the company's always there
8 checking to see if the owners are there.

9 Q. With the ASR?

10 A. Right, the ASR or the mystery shoppers, they demand that a
11 partner or someone who is above a sales associate always be
12 there with the sales associate. Now if they would have found
13 out -- if they knew that one particular person was working all
14 these hours, they would have shut me down a long time ago.
15 That's a fact.

16 Q. During the time that Mr. Medina was employed here, from
17 training through the end, what complaints, if any, did you
18 receive from the ASR?

19 A. Nothing. Well, about the store in general or about the
20 employee?

21 Q. About the employee.

22 A. There was some sanitary issues in the beginning, but it's
23 not important talking about this. No, no complaints, no.

24 Q. Okay. Mr. Medina testified earlier that beginning in the
25 month of May through June he worked approximately 50 hours per

HBDTMED2

Park - direct

1 week, that he testified. What recollection, if any, do you
2 have regarding this particular period from May and June of
3 2015?

4 A. He did not work those hours, period. He did not.

5 Q. Can you describe for us the employee time sheet and the
6 process?

7 A. So when employee besides myself -- I have my own ID log-in
8 as well. So when somebody works at the store, we're given that
9 code so they could verify. So when an owner goes to the store
10 the following day to pick up the money, we count the money and
11 say we know this should be X amount of dollars inside the
12 store, say put aside from the previous day or two days went on.

13 The way we do that is we go through the actual system
14 and see the sales log, then he needs to -- that's how we know
15 what was sold that day, that's how we know how much money came
16 in, that's how we know how much payments came in. We put the
17 numbers together and that equals how much is actually put in
18 the cash drop box and whatever, and that's how.

19 So they need to log in for them to be able to process
20 that. If they didn't do that, then that means I have all this
21 cash that's over, so that's the sale that's not accounted for.

22 Q. You testified earlier about there's two different systems
23 with the sale and then with the log-in.

24 A. Right.

25 Q. One of them you said was --

HBDTMED2

Park - direct

1 A. They're both log-ins.

2 Q. One you said was through Metro PCS, and one of them you
3 said was through a third party that was contracted by Metro
4 PCS. So for the log-in for the time sheet, which one is that?

5 A. It's the third party company, it's called Wireless
6 Standard.

7 Q. Thank you. With respect to the time sheet for Mr. Medina,
8 have you seen Exhibit Number 5?

9 A. May I see it, please?

10 Q. Can you tell us what you know regarding whether the system
11 was working from time to time?

12 A. To be honest, I got this record after I got sued. There
13 was never -- there was no reason for me to look at the time
14 sheets until before I got sued. There was never an issue.
15 There was no problems about stores being open, there was never
16 issues about the store being closed. After I looked at them, I
17 started raising a lot of questions. Why is he not signing out
18 properly the way he was instructed to? I started to begin to
19 think he planned this all along. That's what I thought.

20 Q. What communications, if any, did you receive from
21 Mr. Medina regarding the time sheet and the log-in procedure?

22 A. There was never -- he never told me anything about any
23 problems about Wireless Standard. Never. It doesn't make
24 sense for one particular computer to fail one particular
25 employee where he works for me, and this is -- there could be a

HBDTMED2

Park - direct

1 wide outage of problems because it's handled by a third
2 company, but that's something that I would have heard about.
3 For him to say that only sometimes it worked, sometimes it
4 doesn't, that's not the case. When you punch in, that one here
5 now, you punch in now, punch out. It's a matter of you just
6 saying you X out the program and it punches you out
7 automatically.

8 Q. Okay. Do you recall the one or two times that you said
9 that you may have paid -- that he may have worked overtime?

10 A. Right. So I know for a fact the last month, right, the
11 last month of November, that week he worked overtime. I don't
12 understand why he's here saying that he quit. I knew from two
13 months prior to that he was no longer going to work for us.

14 Q. So that was one instance. Do you recall the other
15 instance, if there was any, regarding overtime?

16 A. Maybe -- the only thing I could think of is my daughter was
17 born in July, so that day when -- she was born on Wednesday, so
18 if -- I would probably ask him to work the following day.

19 Q. So did Mr. Medina ever tell you at any time when it came
20 for payment that he had worked more than 40 hours?

21 A. No.

22 Q. I asked about May and June. Now if I turn your attention
23 to July, the month of July, Mr. Medina stated that he worked 55
24 to 60 hours for the first and second week of July and
25 approximately 45 hours for the third, fourth and fifth weeks of

HBDTMED2

Park - direct

1 July. Did you hear that?

2 A. Yes, I heard. That's incorrect. So when he was talking
3 about the days in July, the only week that makes actually sense
4 that he could have worked 46 hours instead of 36 hours is
5 July -- the third week of July is when my daughter was born,
6 which is the 23rd. Any other day, any other time -- so even he
7 said all the sudden he was working 55 hours and dropped to 35,
8 no, 35, is the constant number of the hours he was always
9 scheduled to work.

10 Q. So when he was paid, either by you or when he took the
11 money, that was based on a calculation of 35 hours, was that
12 your understanding?

13 A. Right. If you worked three days and a Sunday, yes. If you
14 worked three days, just for 30 hours.

15 Q. Okay. Now I turn your attention to month of August 2015.
16 Mr. Medina stated that he worked approximately 45 hours a week.
17 Is that correct?

18 A. So that's actually right. If my memory serves me
19 correctly, he took time off sometime in August to go visit his
20 family in Florida. And this is -- I bring this up because
21 right after he came back, that was when he informed me that he
22 was going -- that he was no longer going to live with his
23 grandparents, he was going to move back to Florida. And I said
24 how much time can you give me? I think I'm going to my best to
25 survive until November. And that's how he end up working until

HBDTMED2

Park - direct

1 November. He didn't just quit. No.

2 Q. If you look at page 3 of the time sheet, you'll notice
3 that --

4 THE COURT: Exhibit 5 you're talking about?

5 MR. CHUN: Yes.

6 Q. You'll notice that there's a gap from August 11 to
7 August 23.

8 A. I think that's what it is. We could probably call TSA and
9 find the travel records. He was gone about a week, maybe a
10 week, more than a week, I forget.

11 Q. Was he paid for that week?

12 A. No.

13 Q. Now Mr. Medina testified that starting around -- sorry,
14 we'll move to September, that he worked on the first and second
15 weeks of September, 40 hours, and the third and the fourth
16 week, so the last week being from September 20 to the 26th, 55
17 hours that week.

18 A. That doesn't make any sense. Like I said before, all cell
19 phone stores, the busiest peak drops right off the first week
20 of September and constantly slow until black Friday,
21 Thanksgiving.

22 Q. Do you recall during the month of September who was in the
23 store?

24 A. Again, I would most likely schedule him Monday, Wednesday
25 and Friday, and I would work Tuesday, Thursday and Saturday.

HBDTMED2

Park - direct

1 And the alternating weeks I would work Monday, Wednesday and
2 Friday and he would work Tuesday, Thursday, Saturday and
3 Sunday. That's how it was.

4 Q. Is it correct that the store is open for a total of 66 of
5 hours during a week?

6 MR. ANDROPHY: Objection, leading.

7 THE COURT: Rephrase the question.

8 Q. Do you recall from the week of September 27 to October 3rd,
9 that seven days, do you recall during that week, from Sunday to
10 Saturday, how many hours the store was open?

11 A. The mandated hours that we reported is Monday through
12 Saturday, 10:00 a.m. until 8:00 p.m., and Sundays from 11:00 to
13 5:00 p.m. At that time, those are the operating business
14 operating hours.

15 Q. So is that a total of 66 hours?

16 A. 66 hours.

17 Q. So Mr. Medina, from the week of September 27 to
18 October 3rd, stated that he worked 70 hours. What is the
19 response to that?

20 A. I don't know where he got those numbers. Maybe he's adding
21 those numbers, I was closing the store and it took me one hour
22 to open the store, one hour to close the store after -- before
23 business hours or after business hours. That's something I
24 would have known about. And for at that time when it's slow,
25 for him to say that I was there past 8:00 just doesn't make

HBDTMED2

Park - direct

1 sense. We could probably get those records seeing if there was
2 any activations on the particular week after 8:00. There was
3 none.

4 Q. What do you mean by "activation?"

5 A. Whenever there's an activation, there's a time stamp. If
6 he would have done some kind of phone sale past 7:45, any time
7 after that, there would have been a time stamp. And the system
8 is set up so that there's something called Q pay payment
9 system, it shuts off, at 8:30 or 9:00 o'clock it shuts off.
10 Even if you wanted to sell phones, you can't do it.

11 Q. Is that your store policy or --

12 A. Metro PCS corporate policy.

13 Q. Okay. I had a question about something else. Regarding
14 the cash deposits, does that include the people that pay their
15 phone bill, the 90 percent?

16 A. Yes.

17 Q. Thank you. So do you recall if during the week
18 September 27 to October 3rd, that Sunday through Saturday, that
19 the store was open for 70 hours?

20 A. That's incorrect. There's no way.

21 Q. Do you recall Mr. Medina stating that he was paid for 45
22 hours?

23 A. I don't understand how someone claims to work X amount of
24 hours that I intentionally say you know what, either I give you
25 less money for less hours and you don't bring an issue about

HBDTMED2

Park - direct

1 it, number one; number two, if I give you the sole full power
2 to take the money from the register, why not take the full
3 amount? I don't understand that. I really don't understand
4 it.

5 Q. Okay.

6 A. So if he in fact did work all those hours, he could have
7 taken all that money, right? Then I would have brought that
8 issue up the following day. I would have say, you know, you
9 only worked 35 hours but you took money for 55 hours, or you
10 understand? Or vice versa, if I did not want to pay him more,
11 if I wanted to just steal from him and deduct ten hours or 15
12 hours, I would have made sure I was there to make sure he
13 didn't take all that money. But that wasn't the case. I gave
14 him the full authority to say you know what, you worked X
15 amount of hours, that's what you get paid, take the money, and
16 that was it. And there was never an issued raised by me for
17 eight months.

18 Q. Was there any issue raised by him for the eight months?

19 A. Never. August he goes to Florida, or at least he told
20 me -- he told everybody else was going to Florida. He comes
21 back seven to ten days later and says I decided to move back
22 with my family, my family is in Florida. I said good for you.

23 Then, as I stated before, first initial agreement, why
24 he asked to be paid in cash, right, because citizenship issues
25 and stuff like that, and everything was -- that month he came

HBDTMED2

Park - direct

1 to my store flashing the United States citizenship papers, and
2 I congratulated him. I said, you know what -- maybe I thought,
3 because I had a point to this, maybe if he wasn't -- I thought
4 I was being a good guy. I thought I was helping him out by
5 paying him cash.

6 Q. Now what disputes, if any, arose starting in September of
7 2015 with you and Mr. Medina?

8 A. I was -- I got hit by a truck when I saw the serving
9 papers.

10 Q. This is September of 2015.

11 A. September 2015 there was no issues.

12 Q. Now I want to turn your attention to the month of October
13 2015. Mr. Medina stated that from October 4th to October 10 he
14 worked 65 hours. October 11 through October 17, 53 hours.
15 October 18 through October 24, 61 hours. October 25 through
16 October 31, 65 hours.

17 A. Those numbers, at least to me, doesn't make sense. Because
18 either it ends with zero, because you worked a full day, 30
19 hours, or 36 hours. I don't know where 53 is coming from. He
20 doesn't work partial days, he was never like that.

21 Q. I'll turn your attention to September 17, 2015. Mr. Medina
22 states that he wrote it down in his log, he worked from 10:00
23 a.m. to 2:00 p.m., James worked from 2:00 p.m. to 6:00 p.m.,
24 and then he worked from 6:00 p.m. to 8:00 p.m. Is the James
25 that he's referring to you?

HBDTMED2

Park - direct

1 A. Yes.

2 Q. So do you recall the events of September 17, 2015?

3 A. You know, I wouldn't say that's incorrect, but that hardly
4 never happens. So it may have been a case where he probably
5 asked me, I probably asked him could you work that day, he was
6 supposed to work that day then he had something going on and he
7 asked me to come in. That's the only way something like that
8 would happen.

9 Q. Now regarding October 21st, 2015, Mr. Medina writes in his
10 log he worked from 10:00 a.m. to 2:00 p.m., Luis worked
11 10:00 a.m. to 2:00 p.m., he worked 2:00 p.m. to 8:00 p.m. Do
12 you have any recollection regarding the events of October 21st?

13 A. Not that particular day. If I would guess, either Luis was
14 supposed to work that day full day, then he asked Mr. Medina to
15 cover from 2 to 8, or again, vice versa, Mr. Medina was
16 supposed to work that day full day, but for whatever reason he
17 couldn't, so he covered for him from 10 to 2.

18 Q. Do you recall if during the month of October Mr. Medina
19 worked more than 36 hours per week?

20 A. No.

21 Q. No, you do not recall?

22 A. No, I know for a fact he did not. So the reason I say that
23 is because now I'm getting ready to replace him because he's
24 going to leave me the month before. This is the process where
25 we start finding new employees and training somebody. There's

HBDTMED2

Park - direct

1 no reason for him, for me, the trainees to be here, that's too
2 many people. There's too many people working in one small
3 store with low volume.

4 Q. What was the procedure regarding --

5 A. The procedure would have been to work Monday, Wednesday and
6 Friday. If I worked Tuesday, Thursday and Saturday, the
7 trainees come in Tuesday, Thursday and Saturday. That's how it
8 worked.

9 Q. Understood. Now I want to turn your attention to last
10 month that he worked, November 2015. Did you receive anything
11 from Mr. Medina in writing about him possibly ending his
12 employment?

13 A. He told me two months, three months prior to that that he
14 was getting ready to go back to Florida. And he did in fact
15 tell me: For the last month, can you give me as many hours
16 possible? That's because in November, even then I did not go
17 past 40 hours, because business was slow, then that probably
18 black Friday was probably his last day here.

19 I think it was -- I'm not sure, you could look it up,
20 the 28th, was that a Friday? If it was a Friday --

21 Q. It was a Saturday.

22 A. Maybe the following Saturday we probably decided to open
23 earlier, because that's the only time we open earlier all
24 season, maybe two days. He knew he was leaving, I asked him to
25 help as much as you can, because we had other employees then.

HBDTMED2

Park - direct

1 Q. So for the first week of November, Mr. Medina stated he
2 worked 45 hours.

3 A. Incorrect, no way.

4 Q. And that you paid him 45 hours at \$9 an hour.

5 A. No. I mean I wish I could have written down all those
6 hours myself, too, you know, I could write one right now and
7 submit it to the Court.

8 Q. From November 8 to November 14, Mr. Medina stated that he
9 worked 35 hours, and --

10 A. That's the only time that sounds correct to me.

11 Q. -- and didn't know how much he got paid.

12 Do you recall -- so this is the --

13 A. Come on.

14 Q. -- third to the last week that he was employed.

15 Do you recall whether you paid him personally on that
16 day or was money taken from the register?

17 A. Well, I cannot say for sure that if I directly handed the
18 money to him or he was asked to take the money from the
19 register based on his total hours. But either way, he got
20 paid. He would have said something to me. With his character,
21 with that mouth, there's no way he would not have said
22 something. He let me know all the time if things were off. He
23 would have said something months before, from the first
24 incident on.

25 Q. Was there ever a circumstance where you paid him late?

HBDTMD2

Park - direct

1 A. You know, maybe, maybe. So maybe it was like this, I was
2 supposed to be there Saturday to pay him, right, maybe for
3 whatever reason I did not go. I tell him hey, can I pay you
4 next week? Maybe that happened once, maybe twice, but it was
5 never habitual. He got paid week after week. He took the
6 money or I handed it to him myself.

7 Q. Did he leave a receipt for the times that he took money?

8 A. Right, so there's something called Q pay receipt paper. It
9 was -- Ely took \$360, or \$270, he would put inside the
10 register, that would add to the total we're supposed to find
11 the next day. So if we're for \$270 short, for example, I would
12 have Ely's signature saying something that I would have
13 crumpled up and thrown away, but I should not have done that.

14 Q. Now I'll turn your attention to last week that he worked,
15 November 27, 2015. Mr. Medina wrote down in his log he worked
16 twelve and a half hours. That's the day after Thanksgiving.

17 A. That makes sense. Thanksgiving we're closed, obviously, so
18 the following day -- nothing really happened, but I do remember
19 that particular black Friday because we had two different girls
20 that were supposed to be out there, and Mr. Medina stayed
21 inside the store and they rotate. That's the only time we
22 could get away flagging Parkchester outside the actual store.
23 So I remember that day. Probably the following day or the week
24 after we all went out for dinner.

25 Q. Now the last day he worked was November 28, 2015, that's

HBDTMED2

Park - direct

1 ten hours, he says, on a Saturday.

2 Was he paid on that particular day?

3 A. Yes. That was the last thing it was going to be. Of
4 course I would have paid him. He was normally going to work
5 for me.

6 Q. Do you recall what time on Saturday you gave him money?

7 A. The only thing that I cannot tell the Court for sure is
8 that we went out. I called everyone that worked for me in the
9 New York area to have dinner to send him off because he was
10 moving to Florida, and I can't recall if it was after the 28th
11 or the week before. Maybe it was before the 28th. I have my
12 credit card receipts. I'm sure, knowing me, I would have not
13 scheduled the company dinner a week before a major busy week, I
14 would have probably scheduled it afterwards.

15 So even afterwards, all the money was paid, he brings
16 his fiancée or girlfriend there, I bring my own family there,
17 all the employees are there, we are happy. Ely, good luck to
18 you. Then two months later I get hit with serving papers.

19 Never seen it until -- then the market research store moved to
20 another location, like Mr. Medina stated, maybe a block away,
21 another cell phone store came in. I saw him as an employee
22 right next door.

23 Q. You saw who as an employee?

24 A. Mr. Medina. I was shocked. But that was after I got sued
25 already, so I didn't talk to him after that.

HBDTMED2

Park - direct

1 Q. I see.

2 THE COURT: Do you have anything further?

3 MR. CHUN: I do, I'm reviewing my notes for one final
4 time.

5 Q. So Mr. Park, as we stand here today, what payments, if any,
6 are missing that should be paid to Mr. Medina?

7 A. There's no payments. All the money -- if anybody is owed
8 money, it would actually be me, if I look back. Every time he
9 made a major mistake at the store -- and the actual president
10 wanted him fired -- I'm the one that defended him. He would
11 let people walk away with merchandise, with expensive phones,
12 and big mistake. I'm the one who shielded him.

13 When you buy a phone, you're expected to process the
14 month payment -- the month payments before 8:30 that day before
15 the business day. If you don't do that, the entire sale gets
16 lost, so the store owners, they're not compensated for that
17 particular sale. And Mr. Medina made plenty of -- handful of
18 mistakes. There's only one person working there, so we could
19 look back and see how much those mistakes up to.

20 Those add up to thousands of dollars. I'm the one who
21 protected him. Never, never said a word, say you know what
22 you're doing okay, right? Because to me, trust was more
23 important to me than an employee that doesn't make any
24 mistakes, so I thought at that time.

25 Q. Was there a period of time in September or October where

HBDTMED2

Park - direct

1 you were traveling and you instructed Mr. Medina to --

2 A. I think I took my family -- no, wait, there's no way that
3 particular year I traveled somewhere, because my daughter was
4 less than a hundred days old. I would not have traveled
5 outside of New York nowhere.

6 Q. November 2nd, 2015, so this is the last month he worked,
7 Mr. Medina stated and wrote down in his log, payment of \$300.
8 Do you recall that?

9 A. I probably did. To be honest, don't know, either took the
10 money or wrote that down or I gave to him myself, either or.

11 Q. What about December 3rd, 2015, so after he worked,
12 Mr. Medina stated that he received \$1,500.

13 A. Now that's a funny thing. That last week, that big chunk
14 was the last payment I gave him the last day, and I added about
15 another few hundred dollars in there, it was like a send off
16 gift saying hey, you did pretty well for the past eight months.
17 That's why I did that.

18 Q. Now there was a payment he also referred to November 10,
19 \$600, and November 20, \$500. Do you recall those payments on
20 those dates?

21 A. Well, not the dates exactly, but sure, yeah, I mean if
22 there was -- when Ely was there, there was never an issue about
23 money that was not accounted for. So I just said to add all
24 the numbers up to see what it adds up in the entire month. But
25 it's correct, I would have said something that there was money

HBDTMED2

Park - direct

1 missing that I took or Ely took for his pay.

2 Q. Were you informed?

3 A. No, he's good for that.

4 Q. Were you informed that he was taking money for back
5 payments?

6 A. Like I stated, I did not know there was an issue about this
7 overtime stuff until I got served with papers.

8 Q. And other than the one or two times that you stated he may
9 have worked overtime, what hours and what weeks, if any, did he
10 work overtime?

11 A. If he works overtime it would have been 46 hours or --
12 there's no, it's not -- 46 hours.

13 Q. Do you recall how many times he worked 46 hours?

14 A. Maybe once or twice in the third week of November and the
15 first week of July.

16 Q. Besides the \$9 an hour, were there any other payments made,
17 such as disability?

18 A. No.

19 Q. And for the time that he worked, did Mr. Medina receive a
20 1099 or any tax document?

21 A. No. He asked me specifically not to do that. I have this
22 idea, I have a Social Security, I have it, I still have it. He
23 told me not to report it because it was going to hurt him
24 getting his U.S. citizenship in August. This was way before.
25 And he told me he was getting some kind of medical benefits

HBDTMED2

Park - cross

1 that was going to hurt that. So what I didn't understand
2 what -- I know he was being paid through check while working at
3 the market research place, but maybe not making enough hours,
4 maybe that's why it was.

5 MR. CHUN: Thank you, I have nothing further.

6 THE COURT: We can take a two-minute break.

7 (Recess taken)

8 THE COURT: Mr. Androphy, do you have
9 cross-examination?

10 MR. ANDROPHY: Yes, your Honor.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. ANDROPHY:

14 Q. Mr. Park, you're familiar with the clock-in, clock-out
15 system that was used at your store, correct?

16 A. Yes.

17 Q. And that would work -- the way that would work is each
18 employee would have a specific code that they would put in, log
19 in?

20 A. They have a log in and password, yes.

21 Q. And so someone could only log in as themselves, correct?

22 A. Yes.

23 Q. You wouldn't be able to log in yourself as Mr. Medina?

24 A. No.

25 Q. And Mr. Yo wouldn't do that, correct?

HBDTMED2

Park - cross

1 A. Each of us have our own ID and password.

2 Q. You have Plaintiff's Exhibit 5 in front of you, correct?

3 A. Yes.

4 Q. Do you understand that this document is a report from the
5 cell company as to the log-in times and log-out times for
6 Mr. Medina?

7 A. This is actually a printout from the Wireless Standard, the
8 software where you log in Medina and click, it tells you your
9 total hours worked, press click and gave me this.

10 Q. So you printed this out from the Wireless Standard?

11 A. Yes.

12 Q. And this is a document you had access to as a person in
13 charge of the East Communication store, is that right?

14 A. Yes, anybody who has their own log in or password could
15 access this information.

16 Q. And this is a record that was kept by East Communication in
17 its regular course? Not the printout itself, but the log-in
18 information?

19 A. Yes, can't be altered, can't be -- this is handled by a
20 third party. We pay them monthly, and that's how it works.

21 MR. ANDROPHY: We ask that Plaintiff's Exhibit 5 be
22 admitted?

23 THE COURT: Any objection?

24 MR. CHUN: No objection.

25 THE COURT: It's admitted.

HBDTMED2

Park - cross

(Plaintiff's Exhibit 5 received in evidence)

Q. If you take a look on the first page of that document, starting on March 23rd, 2015, do you see that?

A. March 23rd, yes, sir.

Q. I will represent to you March 23rd, 2015, was a Monday, march 28 was a Saturday, and within that period there are log ins on March 23rd, correct?

A. Yes.

Q. March 24?

A. Yes.

Q. March 25?

A. Yes.

Q. March 26?

A. Yes.

Q. March 27 and March 28, correct?

A. Yes.

Q. So on six days, six consecutive days there are log ins for Mr. Medina for that week, correct?

A. Yes.

Q. And Mr. Medina would have been the one to make in the log ins, correct?

A. Yes.

Q. No one else was able to do that?

A. No.

Q. Going now to April 7 through 11 -- and I will represent to

HBDTMED2

Park - cross

1 you April 7 was a Tuesday and April 11 was Saturday -- you see
2 there are five days, each consecutive day, each day from
3 April 7 through April 11?

4 A. Yes.

5 Q. And log ins made by Mr. Medina?

6 A. What I don't understand here is how do you log in -- punch
7 in at 9:47 and punch out at 8:21?

8 Q. Is there a specific entry? You're referring to the
9 April 2nd?

10 A. Yeah, April 3rd. So that means he was only there -- or he
11 was actually past 24 hours. Doesn't make sense.

12 Q. I think -- tell me if you disagree. I think it's fair to
13 say this does not record every single clock in and clock out.
14 Is that fair to say?

15 A. It does not represent every clock in and clock out.

16 Q. For example, you pointed out April 3rd, 2015, the clock in
17 is 10:37, there's no clock out for that day?

18 A. Yes.

19 Q. There's some missing entries, correct?

20 A. Yes.

21 Q. But every entry you agree was made by Mr. Medina, correct?

22 A. I could find out right now what his password is, it's a
23 matter of downloading the software, seeing what the password
24 is. I'm trying to find out, each of us supposed to have our
25 own log in and password. I don't know what was created as a

HBDTMED2

Park - cross

1 password for him. I don't know if it's generic password or
2 not. But only if you're -- let's say Mr. Medina changed it to
3 something, a difficult password that nobody knew, it would be
4 only him logging in, but if it was a standard easy password,
5 who knows?

6 Q. Did you log in under Mr. Medina's name yourself?

7 A. I didn't, no.

8 Q. Did you have reason to believe that Luis Yo ever logged in
9 under Mr. Medina's name?

10 A. I can't speak for him, but I don't understand why he would
11 do that.

12 Q. Wouldn't make sense for anybody to log in as Mr. Medina,
13 correct?

14 A. Right.

15 Q. And you're not aware of any way that Mr. Medina could have
16 logged in remotely, are you?

17 A. You can, if you download the software to your computer.

18 Q. Okay. Do you know that for a fact that you can log in
19 remotely for this?

20 A. Yes, right. Actually thought about this when I printed
21 this out. I was trying to understand why there are so many
22 hours overlapping and this was all messed up. And it just
23 occurred to me that Mr. Medina is actually tech savvy. He was
24 going to school, or he was before, he was in school prior,
25 something with programming, computer related. So it took me a

HBDTMED2

Park - cross

1 few -- it took me a while to figure out how he could alter
2 this. All it takes is you get the license key from the
3 software go to your home computer, download the software, and
4 put that key in and it will work, just like the way it works at
5 the store.

6 Q. I believe you testified about five minutes ago that no one
7 could alter this once its entered. Is that your testimony?

8 A. Sorry. So what I meant to say was if you are properly at
9 the store, if you log in with that, you cannot. But I was
10 trying to understand how this was possible for a very long
11 time, because you have to understand, I thought a friend of
12 mine was working at the store until I got hit with papers, then
13 I found this on top of it. I was trying to understand how this
14 was. So I thought he was planning this the whole time to come
15 after me, to go after the East Communication, and I thought
16 that was the only -- that could be a way to mess up all the
17 time clocks so he would have actually a leg to stand on.

18 Q. What did you realize that? When did you come up with --

19 A. I don't know, when I got served papers, I think February or
20 March sometimes. Then after I got the attorney I was asked
21 hey, can you prove how many hours he worked? I said yes, I
22 could find out where he punched in, where he punched out, then
23 I found this. So it took me some time to realize that you
24 could do it that way to alter the time clock, yes.

25 Q. So after some time of being sued, you came up with this

HBDTMED2

Park - cross

1 theory maybe Mr. Medina was logging in remotely?

2 A. He acted like a friend until he served me with papers, so
3 anything is possible.

4 Q. Can you answer the question? You came up with this theory
5 after you were being sued he logged in remotely to create these
6 time records?

7 A. My own thoughts, yes.

8 Q. Okay. And you brought evidence of that today, correct?

9 A. I was just trying to merely point out the fact that if
10 you -- there's a back doorway to alter the time clock, yes,
11 because he testified earlier saying the computer will work, the
12 computer doesn't work, and I never had an issue with all the
13 employees before and he's the first one.

14 Q. And you have been aware of this lawsuit for at least 16
15 months or so, correct?

16 A. Yes.

17 Q. And so in that 16 months you have brought in evidence to
18 show that this is possible, that Mr. Medina logged in from
19 outside to create false records?

20 A. I really thought this was a clear cut case. I know I paid
21 him. He knows that. And I -- when I first contacted my
22 attorney, I said you know what, I have the time to prove all
23 the days he worked, and the sure thing turned out to be like
24 this. I started thinking how can this be? Why are you punched
25 in for 24 hours or entire week consecutively? If he would have

HBDTMED2

Park - cross

1 signed in at another terminal location and left that there,
2 then that means this is how he would have looked. This is not
3 him punching in this particular time, this is just overlapping
4 of time where when you overlap it's punched in, it seems to me.
5 That's what it seems to me right now.

6 Q. Where do you see an example here that are overlapping as
7 opposed to him actually punching in?

8 A. So for example, March 27, from 4:10 p.m. the following day,
9 9:40, 9:42, then March 28, 9:40, 9:42, starts like that again.

10 Q. So sometimes it records in the way that doesn't really seem
11 to make sense, but do you have any reason to believe that
12 someone other than Mr. Medina punching in at the store punched
13 in at 4:10 on March 27 or 9:49 on March 28?

14 A. I'm trying to point the fact that -- but you reading the
15 dates, punch the time for six consecutive day doesn't mean he
16 works six consecutive days. I was answering to that question.

17 Q. What's the other possibility? What's your explanation of
18 how that means anything other than he logged in and worked
19 those days?

20 A. Until I saw Mr. Medina worked in my next door competitor, I
21 was actually going to talk to him and find out what was going
22 on. My only theory, the way my brain work right now, the only
23 possible explanation I have is when that -- why he did this is
24 only towards the negative, he left with a hug and with a
25 handshake and served me with papers, then he started working

HBDTMED2

Park - cross

1 for my next door competitor a week or two after.

2 Q. So you have no explanation of how it turns out the second
3 page here -- actually, turn to the second page.

4 You see from May 7 to May 17?

5 A. May 7 to May 17, uh-huh.

6 Q. Every single day there's a clock-in by Mr. Medina, correct?

7 A. I see it here, yes.

8 Q. And you have no explanation other than a theory that maybe
9 he downloaded the software by obtaining a license key and
10 hacked into this computer information?

11 A. So he testified earlier that he is an eager worker, shows
12 up one hour prior to actual opening time and does everything,
13 right? Why is the time stamp past after ten the whole time?

14 Q. Sir, that wasn't my question. My question is: Do you have
15 any reason that you can offer for why Mr. Medina clocked in
16 every day May 7 to May 17 consecutively?

17 A. Not except what I told you, no.

18 Q. Okay.

19 THE COURT: Off the record.

20 (Discussion held off the record).

21 Q. Similarly, June 13, starting June 13 -- withdrawn.

22 Starting June 18 through June 27, Mr. Medina logs in
23 ten consecutive days, correct?

24 A. Based on the time sheet right here, yes, but the time is
25 incorrect. He's logging in at 7:00 p.m. He's logging -- the

HBDTMED2

Park - cross

1 19th he logged in on 7:00 p.m., on June 23rd he logs in at 4:49
2 p.m., the day before, 4:37 p.m. No business owner would ask an
3 employee to show up only three hours for a day, especially like
4 this in the middle of the day. It doesn't work that way.

5 Q. Not to belabor the point, but the Court can concern
6 certainly take judicial notice of the dates and the clock-ins
7 and clock-outs how many days there are clock-ins in a week, but
8 after reviewing these records, your testimony remains that he
9 never worked more than three full days and sometimes maybe a
10 Sunday --

11 A. Yes.

12 Q. -- a week?

13 And you have records of that?

14 A. No.

15 Q. Okay.

16 A. That's why I'm here.

17 Q. In addition to these time records, you testified that
18 there's another record of log ins by employees to show like who
19 made the sale, is that correct?

20 A. Well, not who made the sale, it's a program -- it's a
21 company website called ASAP, and that's where, if I was
22 purchasing a phone, I would put in my name, my address, my
23 email, and the plan that I want, I will use that to make an
24 activation sale.

25 Q. So someone needs to be logged in to make the sale?

HBDTMED2

Park - cross

1 A. That's the general password for everyone, one ID, one
2 password for that particular location.

3 Q. So those records would not tell you who made a particular
4 sale?

5 A. Not who, no.

6 Q. The location -- the East Communication location in the
7 Bronx is not the only location that you're involved with,
8 correct?

9 A. Yes.

10 Q. You're also involved in the location in Poughkeepsie?

11 A. East Communication PK, yes.

12 Q. Is there another location around New Jersey or
13 Pennsylvania?

14 A. No.

15 Q. How often were you at the Poughkeepsie location?

16 A. Usually there twice a week.

17 Q. Who is there the rest of the time?

18 A. The employee.

19 Q. Just one employee?

20 A. One or two. Only depends on the season. Poughkeepsie is
21 that one store, all the other stores they demand at least one
22 full time and the owner to be there, but Poughkeepsie for the
23 numbers being really slow, that's the only store they have a
24 waiver, verified. I could call T Mobile right now.

25 Q. Okay. For the location in the Bronx, there was always

HBDTMED2

Park - cross

1 supposed to be one employee and either yourself or Mr. Yo?

2 A. Yes.

3 Q. Isn't it true that often Mr. Medina was the only one there
4 for long stretches in the day?

5 A. For ten hour shifts, yes.

6 Q. So he would be by himself for full days?

7 A. There were times, yes.

8 Q. And that was against the Metro PCS regulations?

9 A. Not necessarily. There's no rule that says I have to be
10 there or Mr. Yo has to be there every single day. It's
11 cumulative hours that actually matters.

12 And the reason I would never use Mr. Medina's ID to
13 log in is because when I'm there I log in with my credentials
14 to show them what -- they're telling me your numbers are low,
15 is it the employee problem or is it my oversight problem, that
16 I will show them one of these and say hey, I was actually there
17 more than once or twice, three times a week.

18 Q. So you would use that log-in system to show Metro PCS and
19 it would be the ASR represents to confirm that you were there?

20 A. Yes.

21 Q. And again, so there would be no reason for you or Luis to
22 log in as Mr. Medina. In fact, you would rather Metro PCS see
23 one or both of you are there, correct?

24 A. I mean so right, it could be that, some days let's say
25 Mr. Medina did not sign out the night before, then I will walk

HBDTMED2

Park - cross

1 in then actually make the sale, then if I scan it, the credit
2 will go to Mr. Medina.

3 Q. The credit where?

4 A. Like the actual phone was sold by the particular employee
5 would go to Mr. Medina, and that's the only -- that's the
6 second explanation that I had.

7 Q. But that's completely separate from the clock-in records,
8 correct?

9 A. Right. I don't understand how this -- no.

10 Q. Isn't it true that you would ask Mr. Medina if ASR reps
11 asked if you were around that you would tell him to say yes,
12 even if you were not?

13 A. Well, yes. I'm five minutes away, so yeah.

14 Q. Did you ask him to do that while you were at the
15 Poughkeepsie store?

16 A. He was never at the Poughkeepsie store.

17 Q. No, while you were.

18 A. Could have maybe, because Yo was around. If I wasn't
19 around, I made sure Mr. Yo was covering for me.

20 Q. By covering, you mean being in the general area, is that
21 right?

22 A. We are always working. The company knows that. We have to
23 replenish the phones and accessories. Because we are not there
24 physically, they know that's part of the work. They understand
25 that.

HBDTMD2

Park - cross

1 Q. But Mr. Medina would be there by himself for full days?

2 A. The days he was instructed to work full days, yes.

3 Q. And on those days you wouldn't know what time he actually
4 arrived at the store, correct?

5 A. Well, I wouldn't check every single day, but one thing for
6 sure is that if there was -- if you open late, there were days
7 he was he late, but he would let me know ahead of time, so that
8 was okay, or -- there was never an official complaint made by
9 the customers saying that the store wasn't open on time while
10 Mr. Medina was supposed to work, yes.

11 Q. So you wouldn't know if he arrives at 9:30, 9:45 or 10:00,
12 as long as --

13 A. I don't ask him to. You're supposed to be there at 10. I
14 don't tell my employees to be there 35, 45 minutes prior to
15 that. It doesn't work that way.

16 Q. But there were things he had to do before the store opens
17 for customers?

18 A. The reason he came in at 9:30 is because he lives far away
19 and the bus time didn't coincide with the 10 o'clock schedule.
20 That's my explanation.

21 Q. But he did have certain duties before the store opens,
22 unlock it, turn the computers on, turn the lights on, correct?

23 A. Computers usually, right, so it takes three minutes, tops,
24 from -- the gate is one lock combination lock, you roll it up,
25 gate goes up, you turn the key, you open the door, the alarm

HBDTMED2

Park - cross

1 will start beeping, you punch in the four digit code, you walk
2 12 to 13 feet around the counter and you punch in saying what
3 time you came in. Takes no more than five minutes.

4 Q. Close of business duties. He would regularly be
5 responsible for end of day closing up the store, correct?

6 A. So not anyone who is past 7 who is supposed to work there
7 until the store is closing, they're instructed to lock the door
8 at 7:30 for any other issues except for sale. For payments,
9 always come back the following day. Any phone issues they
10 could go to different location. So you lock the door, because
11 security issues, you count the money, you put underneath, and
12 you should be done by 8 o'clock, yes.

13 Q. Was there anyone else who worked at the store from February
14 of 2015 until the end of November 2015 aside from Mr. Medina
15 yourself and Mr. Yo?

16 A. Starting September, October and November, I had new
17 employees in training at the time, yes, because he informed me
18 that he was leaving.

19 Q. Did those employees have keys to the store --

20 A. Yes.

21 Q. -- from the point in training?

22 A. From training they do not have keys. As I stated
23 previously, there are only three keys. These are not keys that
24 I could make copies of my own, the landlord issued them to me.
25 I hold one, the landlord holds one, and Ely at the time held

HBDTMD2

Park - cross

1 one.

2 Q. I think you said --

3 A. Mr. Medina.

4 Q. -- Mr. Yo has one and Mr. Medina.

5 A. Yes, he's the least principal owner, so I have one and
6 Mr. Medina has one.

7 Q. Are you a part owner of the store?

8 A. No.

9 Q. So what exactly is your role?

10 A. He's a -- Mr. Yo is a family friend, family friend from 30,
11 40 years ago. I just happened to have time one week when he
12 was away in Europe, he asked me to help and I kind of liked it.
13 I liked the -- I thought I could use a second income, and
14 that's how it started in 2014.

15 Q. And in 2015, was this your primary job?

16 A. No.

17 Q. You had a different job apart from the store in the Bronx
18 and Poughkeepsie?

19 A. Yes.

20 Q. What job was that?

21 A. I'm a biochemist.

22 Q. And how many days per week were you at the Bronx location
23 during that in 2015?

24 A. Three days, four days.

25 Q. Apart from your full-time job?

HBDTMED2

Park - cross

1 A. It's not a daytime job, sir, it's a nighttime job shift.

2 It's a research job using the machines after 10:00 p.m.

3 Q. You were responsible for paying Mr. Medina and deciding how
4 much he's paid each week?

5 A. Mr. Medina, yes, because I'm the one who -- I'm the one who
6 spoke to him first. I'm the one who decided to hire
7 Mr. Medina. I'm the one who had to convince Mr. Yo that
8 Mr. Medina was the right fit.

9 Q. How did you determine how much to pay him each week?

10 A. Well, based on the hours and based on the minimal wage.

11 Q. How did you know how many hours he worked each week?

12 A. I know there's seven days worked days a week, then Mr. Yo
13 and I would take turns, so we usually came out the Monday,
14 Wednesday and Friday schedule or Tuesday, Thursday, Saturday,
15 Sunday schedule every alternate day of the week.

16 Q. Did you do anything at the end of the week to make sure
17 that you had a record --

18 Who had the correct accounting of hours Mr. Medina
19 worked?

20 A. Well, when I first spoke to Mr. Medina, he informed me
21 about his special circumstance and situation. He asked me to
22 be paid in cash. So I know that particular week he worked 30
23 hours or 36 hours, and based on that, he will get paid.

24 Q. You know how many hours he worked based on your
25 recollection of the days he worked and his schedule, is that

HBDTMED2

Park - cross

1 correct?

2 A. Yes.

3 Q. Did you ever ask him to email you the hours he worked in
4 the week?

5 A. You know, that's another funny thing, all my other
6 employees -- all my employees I have email records of it, only
7 Mr. Medina I don't have.

8 Q. So your testimony is Mr. Medina did not email you?

9 A. No, I searched for Mr. Medina's email, I searched my email
10 and I couldn't find anything.

11 Q. I show you what has been marked Plaintiff's Exhibit 3.

12 Take a moment to look at this document and familiarize
13 yourself with it. Do you see on the last page your signature?

14 A. Yes.

15 Q. And you signed this --

16 THE COURT: For identification, you're referring to
17 the response to interrogatories document request, is that
18 correct?

19 MR. ANDROPHY: Yes, your Honor.

20 Q. And you signed this document -- turn to the last page. And
21 above your signature you signed the statement that you have
22 read these answers and the contents are true to my own
23 knowledge except as to matters therein stated to be alleged
24 upon information and belief, and those matters I believe them
25 to be true. Correct?

HBDTMED2

Park - cross

1 A. Yes.

2 Q. You understand that meant you were stating that these
3 answers were true, is that right? I understand it's legalese,
4 but you understand that was --

5 A. That's what I was signing, yes.

6 Q. If you turn to the first page, do you see number 10?
7 Unfortunately we don't have the questions here, but I don't
8 think it's going to necessarily matter.

9 Do you see in response to interrogatory 10 it states
10 plaintiff emailed the hours he worked each week?

11 A. Yes, I see number 10.

12 Q. And you gave that answer honestly and truthfully, correct?

13 Was this answer correct when you gave it?

14 A. Yes, I thought he emailed me those hours, yes.

15 Q. Okay. So is your testimony now that he emailed the hours
16 or he did not?

17 A. If Mr. Medina or myself had any records of what was sent
18 back and forth, we wouldn't be here today.

19 Q. Unless you have it and realized it's counter to your
20 version of facts, maybe that's why we are here.

21 MR. CHUN: Objection.

22 THE COURT: Sustained.

23 Q. Isn't that true?

24 A. Sir, right.

25 THE COURT: You don't have to answer that. Move on.

HBDTMD2

Park - cross

1 Q. What did you do to see if you do have an email record of
2 his hours?

3 A. I went to the search history -- the first thing I did when
4 I got served with the papers, I thought this is absurd. So the
5 first logical thing is actually read it and states he worked
6 all these hours, he never got lunch break, you know, forced him
7 to work all these hours and stuff like that. I said very clear
8 he should have emailed me the hours he worked, right? And if
9 you look in my email, I could show it to the Court right now,
10 every employee that works for East Communication or East
11 Communication PK sends me the end of the day report. And it
12 states the day they worked, how much money that came in. I
13 don't have any of that from Mr. Medina.

14 Q. Do you have that for employees before Mr. Medina?

15 A. You know, Mr. Medina I think is the first employee we
16 hired, maybe except Collette Flores in Poughkeepsie store.

17 Q. So you didn't require Mr. Medina to do that?

18 A. He asked me to pay him in cash. As long as he turned out
19 to be a trustworthy employee, I have no problem doing that. I
20 didn't expect the repercussions of this. If I knew all I had
21 to do was write a check for how many hours times nine, we would
22 not be here today.

23 Q. Did you believe that because you were paying him in cash
24 you did not have to keep a record of hours he worked?

25 A. Not necessarily, no, I didn't think -- I didn't think it

HBDTMED2

Park - cross

1 was a big deal, as long as I knew he was being paid, no.

2 Q. Did you understand that employers are required to pay hours
3 worked above 40 one and a half times the regular rate of pay?

4 A. Yes.

5 Q. Did you understand that employers are required to keep
6 written records of the hours that employees work?

7 A. No, I didn't.

8 Q. Did you understand in 2015 --

9 A. Not as clear as I do now.

10 Q. What was your understanding in 2015?

11 A. I thought if I was paying the actual amount that the state
12 mandates, the employee could file the taxes themselves, I
13 thought it was okay.

14 Q. Did you ever record anything in writing about how much you
15 paid Mr. Medina?

16 A. Again, any logical person would have said something if they
17 were being shorted their money. So he didn't say anything, so
18 there's no record being kept, no.

19 Q. For about nine months of his employment you made no record
20 for yourself or your accountant or the business' accountant --

21 A. No.

22 Q. -- of how much he was being paid?

23 A. Yes, no.

24 Q. No records for the business to report on its tax returns
25 how much they're paying its employee?

HBDTMED2

Park - redirect

1 A. No.

2 Q. I just want to make sure I'm clear about your testimony,
3 did Mr. Medina ever work more than 40 hours in a week?

4 A. No.

5 MR. ANDROPHY: I have no further questions.

6 THE COURT: Mr. Chun, is there any redirect?

7 MR. CHUN: Yes.

8 REDIRECT EXAMINATION

9 BY MR. CHUN:

10 Q. Mr. Park, good afternoon. I want to turn your attention to
11 the employee time sheet. So you spent a good deal of time on
12 this and I want to spend a little more. So with respect to the
13 entries, to the best of your knowledge, they were only made by
14 Mr. Medina, is that correct?

15 A. Yes.

16 Q. So the first entry, the very first one, February 24, 2015,
17 log in of 3:15:08 p.m., do you recall if you were there?

18 A. I'm pretty sure I was there. I'm the one who probably gave
19 him the log ins and passwords and probably said try it, this is
20 how you log in, this is how you log out.

21 Q. And February 26 is the log out time for 03, approximately
22 49 hours later, and you say something about okay, you could
23 download the key and then access it via remote location?

24 A. Yes.

25 Q. If that was the case, wouldn't it still come up as an

HBDTMED2

Park - redirect

1 entry?

2 A. Yeah, right. I don't know. For this particular time,
3 yeah, I don't know. So he signed on, he punched in, and this
4 particular time he did not punch out until the following day,
5 yes.

6 Q. Okay. Thank you. And now let's turn to the very last
7 entry, 11/28, 2015, that was the last day he worked, right?

8 A. Yes.

9 Q. That there was punch in at 11:02 and no clock-out date?

10 A. Right.

11 Q. Do you know, were you there on the last day when he was
12 there?

13 A. Most likely I was there, yeah. I was there because I
14 remember giving out fliers to the two new girls I hired, yes.

15 Q. And did you ever experience -- from February to
16 November 2015, did you ever experience personally any problems
17 with the log-in and log-out procedure?

18 A. No.

19 Q. Now you said your hours are -- the hours are 10 to 8 --

20 A. Yes.

21 Q. -- Monday through Saturday?

22 A. Yes.

23 Q. Now I used to be an employee, too, so for me, 10 o'clock
24 would mean I would show up at 10 o'clock.

25 MR. ANDROPHY: Objection.

HBDTMED2

Park - redirect

1 THE COURT: Is there a question?

2 MR. CHUN: Yes, there is.

3 Q. What time was Mr. Medina required to come to work?

4 A. At 10.

5 Q. And if it took him 30 minutes to open the store, he would
6 be paid for those 30 minutes, is that correct?

7 A. Yes.

8 Q. Okay. Store closes at 8. Does that mean that everything
9 has to be locked out and the employee is out the door at
10 8 o'clock?

11 A. No.

12 Q. Or does that mean that everything is finished at 8 o'clock
13 and then the lock-out procedure, then the closing procedure
14 takes place? What does 8 o'clock mean?

15 A. 8 o'clock means the store -- I would like the gate to be
16 down at 8 o'clock unless a customer comes in and really wants
17 to buy a phone, because the other Metro PCS stores close at 7
18 but the one nearby. So it was our business way of increasing
19 revenues that we'll close one hour after everybody else, that
20 would generate more revenue.

21 Q. But closing means that everything is wrapped up so that at
22 8 o'clock we're out the door?

23 A. Right.

24 Q. Okay. Did you receive any emails -- do you recall
25 receiving any emails from Mr. Medina?

HBDTMED2

Medina - direct

1 A. I searched, pretty much went into or three years, and it
2 was a year back at this time. I checked, nothing.

3 Q. Did you ever sign anything from Mr. Medina --

4 A. No.

5 Q. -- when you paid?

6 A. Right, so when he takes the money, when I handed the money
7 myself, I am looking at the money being transferred. In my
8 eyes, it was okay. When Mr. Medina took money out of the
9 register, on a little white piece of paper, Ely, the date, and
10 the amount he took and put it inside the register.

11 Q. But did you sign anything for the times that you gave him
12 money?

13 A. No.

14 MR. CHUN: Thank you, nothing further.

15 THE COURT: Thank you very much. You may step down.

16 Do you have any other witnesses?

17 MR. CHUN: I do. I would actually like to call
18 Mr. Medina. I only have two questions.

19 THE COURT: Okay.

20 DEPUTY CLERK: Just remember you're still under oath.

21 (Continued on next page)
22
23
24
25

HBDTMED2

1 ELY MEDINA,

2 having been previously sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CHUN:

5 Q. Mr. Medina, in the year 2015, did you receive disability?

6 A. No, sir.

7 Q. And for the tax year 2015, did you file an income tax
8 return?

9 MS. ISAACSON: Objection.

10 A. I'm not sure.

11 MR. ANDROPHY: I have nothing.

12 MS. ISAACSON: We move to strike the answer.

13 THE COURT: On what basis?

14 MS. ISAACSON: Anything about Mr. Medina's tax filing
15 is not relevant and they're forbidden in these cases to be
16 discussed.

17 THE COURT: I'm going to allow it and take it under
18 advisement at this point.

19 MR. CHUN: I have nothing further.

20 THE COURT: Thank you.

21 Do you have any other witnesses, Mr. Chun?

22 MR. CHUN: No.

23 THE COURT: Do you rest at this point?

24 MR. CHUN: The defense rests.

25 THE COURT: Do you have any rebuttal?

HBDTMED2

1 MS. ISAACSON: No, your Honor.

2 THE COURT: So we can move to closing statements at
3 this point. If you want to make a brief close arguments,
4 that's fine. Do you want to go first?

5 MS. ISAACSON: Could we have a ten-minute break, your
6 Honor?

7 THE COURT: Sure.

8 (Recess taken)

9 THE COURT: Mr. Chun, would you like to go first?

10 MR. CHUN: Yes. May it please the Court.

11 We have wrapped up with the documents, with the
12 testimony, fair Labor Standards Act, pretty self-explanatory.
13 This is my first trial handling this matter. I know some
14 basics about trials, this type of thing. The plaintiff has a
15 burden to prove about payments, about hours, what was paid and
16 what was not paid. You don't have any time logs, you don't
17 have any entries. In fact, the Court has admitted testimony
18 from the plaintiff no records from start of employment through
19 end of August.

20 Does my client -- should my client have records? Easy
21 answer is yes for everything. We learned that in law school.
22 Rule number one, get it in writing. Rule number two, get it in
23 writing. Didn't happen. We know that. He was paid the minute
24 he started saying I'm working five hours more and I'm not
25 getting paid for that. Okay. So he let that go for a week,

HBDTMED2

1 Mr. Medina, let that go for two weeks, three weeks, gets up to
2 ten weeks.

3 Reasonable people know two things, when they're not
4 getting paid, they know better than the employer they're not
5 getting paid, and they're going to make a statement about that.
6 And number two, when there's an electronic punch card time in
7 and time out, the first thing you're going to do is punch in
8 because you want to make sure you don't lose even an extra
9 minute to locking up, opening up the doors.

10 Common sense, reasonable person says that he should
11 have been paid what he worked, and he did. You're hearing two
12 totally different stories. One is the plaintiff stating that
13 he worked 45 hours, and in fact, one week at the end of
14 September, based on temperature, he worked 70 hours, more than
15 the store is even open. The store is only open 66 hours. He
16 worked every single hour plus four.

17 My client knows about the overtime laws. He stated as
18 such. And he knows that, as employers, it's better to -- it's
19 preferred not to pay overtime as opposed to overtime for
20 obvious reasons. My client was told when he was going to be --
21 when he was supposed to pay by the plaintiff, pay it, right
22 there, end of discussion. Nothing further. You didn't hear
23 anything about Mr. Medina, oh, I think I'm doing a good job, I
24 think I deserve a raise or I think I deserve more hours. No,
25 you heard my client specifically state three days a week, plus

HBDTMED2

1 a Sunday, either Monday, Wednesday or Friday or Tuesday,
2 Thursday, Saturday, and a Sunday if it was required. That only
3 adds up to 30 -- to 36 hours.

4 Mr. Medina, after working February, March, April, May,
5 June, July, August, now decides to make a record log of what he
6 worked. He never testified anything -- you heard my client
7 state from August he was gone for two weeks, Mr. Medina was.
8 No records, no payments. Didn't work. Now you're seeing all
9 of these handwritten entries that were made one week at a time.

10 So it wasn't brought out, but he worked seven days and
11 recounted all the seven days. You notice on his own ledger a
12 very interesting note, the last entry he makes, November 28,
13 2015, he worked ten hours, okay, then started to put down
14 eleven again, as if there's another date. Now he's saying oh,
15 I didn't work another day, so I don't have to put it in, but
16 meanwhile he already started to write down for the next day
17 after a date that he didn't work.

18 Why do I mention all this? It's difficult to remember
19 specifically from seven days ago and the laws of the State of
20 New York, and I guess also for the Federal Rules of Civil
21 Procedure you want to make sure that your records are entered
22 pretty contemporaneously. I can't even remember what the
23 weather was for the last seven days. And Mr. Medina is going
24 to recall what he did in the hours that he worked? This is too
25 much of a discrepancy, saying 45, 50, later on towards the end,

HBDTMED2

1 September and October, up to 70 hours, 61 hours that he was
2 working.

3 My client not even unreasonable, but it would be
4 foolish for my client to ever say to him you worked 61 hours,
5 I'm only go pay you 45 or 40. There's got to be some sort of
6 discussion when it comes to working more than twice the hours
7 that were originally set.

8 We don't believe that Mr. Medina has really
9 established to satisfy the claims that he makes for the relief
10 that he seeks. There's been no testimony regarding -- the
11 wages and the overtime are his big claims. There's been no
12 testimony presented about other claims, such as improper work
13 procedures being placed. That's part of the complaint. No
14 testimony on behalf of plaintiff, none asked on
15 cross-examination.

16 You have Mr. Medina, who says he worked, he put in the
17 hours, he was paid. He didn't have any problems in the
18 beginning. He started to have any problems, he then had a
19 discussion with Mr. Park sometime in April, agreed that okay,
20 there's a dispute, so this is going to be the amount.

21 The time records my adversaries are trying to say
22 they're so out of whack that we can't -- we don't know anything
23 about anything. Well, we do know that you can punch in and you
24 can punch out, and if you have a problem with one of those,
25 you're going to see -- you're going to talk to some sort of

HBDTMED2

1 supervisor to make sure your time records are kept carefully
2 because you want to get paid properly. He didn't do that for
3 nine months. Even his last day he didn't even punch out
4 because he didn't know to. He didn't say it was malfunctioning
5 that day either, but it doesn't matter.

6 We have a lot of -- the burden for Mr. Medina to prove
7 we don't believe -- we truly believe that hasn't been met. My
8 client, he stated what he had to state. We believe that he
9 made all the payments that were required. We believe
10 Mr. Medina did not show enough proof. He did not say here's my
11 tax return for all the money that I made. He didn't present
12 any bank statements, any account records for any of the monies
13 that he did. Why? Because it's in cash. And cash money is
14 fungible, it can't be traced. I learned that in law school.

15 So we have a situation here where we have an employer
16 that paid cash and an employee took cash, so nobody really
17 knows anything. And he will start saying I believe I worked 45
18 hours, probably I worked 45 hours to 40 hours. He would have
19 known, and if the Court is going to believe his testimony, he
20 would know now that 40 hours plus triggers something.

21 In addition of what my client paid, I looked up the
22 New York State minimum wage at the time was 8.75 for 2015, and
23 the federal I believe was a little lower. So my client was
24 within the range. Didn't give him a 1099, but I guess
25 Mr. Medina will gladly accept the 1099 now for the money that

HBDTMD2

1 he was paid and wasn't reported.

2 My client in these types of cases is looks upon as the
3 bad person. I can understand that. But I can also understand
4 it takes two to tango, so Mr. Medina definitely, definitely has
5 some blame here. And he didn't have anything to back up what
6 he says from February through the end of September, has
7 absolutely nothing, and even stated that he was paid.

8 So we have calculations here based on figures that
9 were just created; nothing was really shown to dispute the fact
10 that he worked more than 36 hours, as my client even stated,
11 one or two occasions, where he was paid overtime.

12 We don't believe that the burden has been met. We
13 don't believe that also the relief sought should be granted,
14 and we would ask that the complaint and the summons be
15 dismissed. We know that here this is just simply an attempt to
16 try to collect more money. Why not? He has nothing to lose.
17 He is going to claim he's judgment proof, my client will end up
18 spending his time here and trying to collect on nothing.

19 So what we have here is a clear case of well, let's
20 try to grab something; if we don't, we're in the same position
21 we are before we started, which is with nothing. So we ask the
22 Court to take into consideration highly the testimony, the
23 documents, especially the time sheets, and the demeanor, the
24 cross-examination of both of the witnesses, and we believe that
25 it should be a defense verdict. Thank you very much.

HBDTMED2

1 THE COURT: Thank you.

2 MS. ISAACSON: Thank you, your Honor.

3 The heart and soul of our labor laws is the
4 recognition that any time an employee who works in excess of 40
5 hours within a week, our legislature and our courts
6 consistently and adamantly require we treat those extra hours
7 as special by requiring employers, absent certain exceptions,
8 to pay a premium for every hour worked over 40.

9 In order to protect an employee's right to extra
10 compensation for these special hours over 40, our federal and
11 state legislators have enacted a very strict regime that places
12 a substantial burden not on the employee but on the employers
13 to record the manner in which they pay their employees and the
14 hours that they suffer those employees to work.

15 The defendants continuously argued in their closing
16 statements that the burden is on the employee, but the employer
17 was required to maintain records of the hours that Mr. Medina
18 worked as well as the pay that they gave him.

19 Today you heard two completely different stories.
20 However, Mr. Medina's story is supported by the time records,
21 both the ones that he submitted to the Court and the records
22 that the defendants have produced. The defendants claim that
23 Mr. Medina worked three and a half days each week that he
24 worked at East Communication, but that is completely
25 contradicted by the time records that they maintained.

HBDTMED2

1 Mr. Medina himself kept records, even though he had no
2 legal obligation to, because the employers failed to do their
3 legal obligations. Mr. Park said in his testimony that
4 Mr. Medina worked 46 hours on certain occasions, but then he
5 stated he never worked over 40 hours.

6 In addition, Mr. Park stated that it wasn't a big
7 deal, and that he never looked at the time records even though
8 he had them in place.

9 He also stated at times it was too complicated to
10 figure out exactly how many hours Mr. Medina actually worked
11 there to do the calculations he's obligated to do under the
12 law. The defendants have virtually maintained no records of
13 Mr. Medina's employment at East Communication despite their
14 legal obligation.

15 In addition, we also learned that defendants failed to
16 provide adequate wage notices and wage statements as required
17 by New York State labor laws, and in fact the defendants failed
18 to give Mr. Medina any document throughout his employment
19 there.

20 Based on the testimony today as well as all the
21 records that have been submitted into evidence, I believe you
22 will find that there were plain violations of both the Fair
23 Labor Standards Act and New York labor law. Thank you.

24 THE COURT: Thank you.

25 So at this time I'm going to deny defendants' motion

HBDTMED2

1 to dismiss the complaint and the summons, and I will take the
2 fair labor and employment claims under advisement and will be
3 issuing an opinion soon.

4 Thank you.

5 (Adjourned)